

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 9991

MERLE V. MILLER, *Appellant*

v.

JAMES FORRESTAL, Secretary of the Navy, *Appellee*.

No. 9992

ROSCOE G. WHIPPLE, *Appellant*

v.

JAMES FORRESTAL, Secretary of the Navy, *Appellee*.

No. 9993

SPERRY H. REYNOLDS, *Appellant*

v.

JAMES FORRESTAL, Secretary of the Navy, *Appellee*.

No. 9994

DAVID R. HUNTER, *Appellant*

v.

JAMES FORRESTAL, Secretary of the Navy,
HARRY B. MITCHELL, President, Civil Service
Commission,

FRANCES PERKINS, Member, Civil Service Commission,
and

ARTHUR S. FLEMMING, Member, Civil Service
Commission,

Appellees.

Appeal from the United States District Court for the
District of Columbia.

United States Court of Appeals
for the District of Columbia
Circuit

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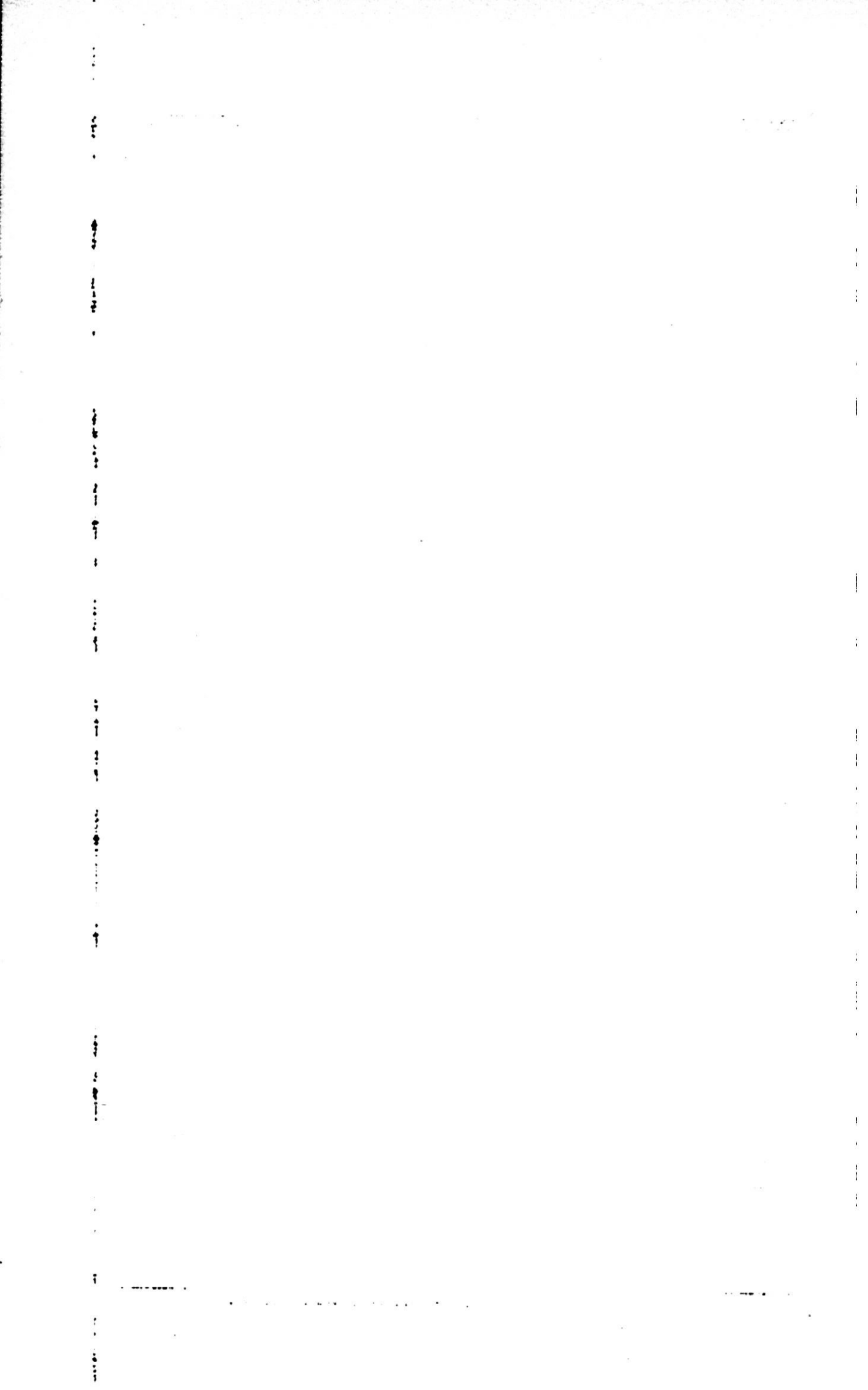


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BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

These cases are consolidated for hearing because the facts are very similar, and the questions of law involved are applicable to each case. The appellants, hereinafter referred to as plaintiffs, brought these actions against the Secretary of the Navy for a preliminary mandatory injunction, and for further relief to compel the appellees, hereinafter referred to as defendants, to restore the plaintiffs to positions held in the Philadelphia Naval Shipyard. With the exception of the case of David R. Hunter, No. 9994, the suits are limited to the defendant as Secretary of the Navy. In the Hunter case, the members of the Civil Service Commission are also joined as parties defendants. With the exception of the plaintiff, David R. Hunter, all of the appellants are honorably discharged soldiers or sailors who served in the military or naval forces during war time. The plaintiff Hunter is a peace time marine who served and was honorably discharged.

The complaint in *Merle V. Miller v. Forrestal* as Secretary of the Navy, No. 9991, alleges (App. 2-5) that he entered employment of the United States at the Naval Shipyard in Philadelphia on February 10, 1930 having previously qualified as a civil service employee, and that he was employed continuously except during the period from April 21, 1942 until March 13, 1946 when he was in the military service, and that after his honorable discharge on March 13, 1946, he immediately was again employed in the said Naval Shipyard. That on April 28, 1947 (App. 3) he was notified by the Industrial Relations Officer of the Philadelphia Naval Shipyard that effective as of June 28, 1947 he would be reduced in grade from the position of Electrical Engineer P-5, to Electrical Engineer P-4, and from a salary of \$6,384.00 per annum to a salary of \$5,905.20 per annum. That due consideration had been given to his efficiency rating and that it was determined that one Charles F. Phillips Electrical Engineer P-5 would be retained in his former position. The complaint alleges Phillips is not an honorably

discharged soldier or sailor. The complaint further alleges that the plaintiff's efficiency rating was good or better at the time of the actual reduction in his grade on June 29, 1947, and that the acts of the said defendant in reducing him in grade was in violation of the laws of the United States granting preference to honorably discharged soldiers or sailors in government service. The complaint prayed that a preliminary mandatory injunction be granted to restore the plaintiff to the position from which he was reduced in grade, and for other relief.

The complaint in the case of Whipple v. Forrestal No. 9992, alleges (App. 21-24) that he entered the employment of the United States at the Philadelphia Naval Shipyard on July 1, 1918, and that with the exception of the time the plaintiff was in military service from September 26, 1918 until March 8, 1920, when he was honorably discharged, he was employed continuously in the said Naval Shipyard. The complaint further alleges that on May 17, 1947 when the plaintiff was graded as Mechanical Engineer P-3, he was advised by the Industrial Relations Office of said Naval Shipyard that he would be reduced in grade from Mechanical Engineer P-3 to Ordnance Engineer P-2, and that his salary would be reduced from \$4,651.20 per annum to \$4,149.20 per annum effective as of June 29, 1947, and that there would be retained in the said grade of Mechanical Engineer P-3, two persons, viz; Robert S. Kirland and Albert C. Sterling who are not honorably discharged soldiers or sailors or otherwise entitled to preference in their employment. The complaint further alleges that at the time that the plaintiff was reduced in grade his efficiency rating was good or better. The complaint prays for a preliminary mandatory injunction restoring the plaintiff to his rightful position and for other relief.

The complaint in the case of Reynolds v. Forrestal No. 9993, alleges (App. 42-44) that he entered the employment of the United States at the Philadelphia Naval Shipyard on May 16, 1939, and thereafter was employed continuously

until the date the complaint was signed. That on May 12, 1947 the plaintiff then occupying the position of Electrical Engineer P-4 at a salary of \$5,152.80 per annum was notified he would be reduced to the grade of Electrical Engineer P-3 at a salary of \$4,902.00 per annum effective as of June 29, 1947, and that there would be retained in his position of Electrical Engineer P-4, several employees to wit: J. F. McNeff, H. C. Nagel, J. W. Best, and J. B. Hasson, all of whom are now retained in the grade, and all of whom are not honorably discharged soldiers or sailors of the United States and who have no preference rights over and above those of the plaintiff. The complaint further alleges that during all of the time that the plaintiff has been employed at the Philadelphia Naval Shipyard and on the date of his reduction in grade as alleged his efficiency rating was good or better. The complaint alleges that the plaintiff enlisted in the United States Army on February 12, 1918, and that he was honorably discharged therefrom on March 5, 1919. The prayer of the complaint demands that a preliminary mandatory injunction issue directed to the defendant as Secretary of the Navy to restore the plaintiff to the position from which he was illegally and unlawfully demoted under the laws of the United States granting preference in government employment to honorably discharged soldiers and sailors whose efficiency ratings are good or better.

The complaint in the case of Hunter v. Forrestal and the members of the Civil Service Commission No. 9994, alleges (App. 67-71) that the plaintiff entered the employment of the United States government at the Philadelphia Naval Shipyard on November 27, 1939, and thereafter was continuously employed until the date of the filing of the complaint. That on April 29, 1947, the plaintiff was notified that he would be reduced in grade from Allowance Engineer P-3, with a salary of \$4,400 per annum to the grade of Mechanical Engineer with a salary of \$4,149.60 per annum, and that such reduction in grade would become effective on June 29, 1947. The complaint further alleges that on June 29, 1947,

the date the plaintiff was reduced in grade there were retained the grade of Allowance Engineer P-3 numerous and divers persons who do not have preference in their employment, and that the retention of such employees as have no preference, and the reduction of the plaintiff in his grade is contrary to the provisions of the Veterans Preference laws of the United States. The complaint further alleges that on the date of his illegal reduction in grade the plaintiff's efficiency rating was good or better. The complaint further alleges that the plaintiff enlisted in the United States Marine Corps on May 4, 1934, and that he was honorably discharged therefrom on September 13, 1935. The plaintiff prays for relief and restoration to the position from which he was illegally reduced in grade, and asks for a mandatory injunction, and a declaratory judgment fixing and determining his rights as a preference employee of the United States.

The defendant in each case interposed a motion (App. 6, 25, 45, 72) for a summary judgment. The plaintiffs likewise moved for a summary judgment. The Court sustained the motion of the defendant and appellees for a summary judgment and ordered that the actions be dismissed (App. 20, 41, 66, 83)

In support of the motion for a summary judgment the defendants attached to their motion certain affidavits, the plaintiffs attached certain affidavits, and the deposition of one Edwin H. Schantz, Industrial Relations Officer of the Philadelphia Naval Shipyard. This evidence will be fully discussed under a caption entitled "resume of the evidence".

From the judgment of the Court below the plaintiffs have appealed, and assert that from the undisputed facts in the case, and the law applicable thereto the Court as a matter of law erred in sustaining the motion of the defendants for a summary judgment.

PERTINENT STATUTES AND EXECUTIVE ORDERS.

"In the event of reductions being made in the force in any of the executive departments no honorably discharged soldier or sailor whose record in said department is rated good shall be discharged or dropped or reduced in rank or salary.

"Any person knowingly violating the provisions of this section shall be summarily removed from office, and may also upon conviction thereof be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year. (Aug. 23, 1912, c. 350, Sec. 4, 37 Stat. 413; Feb. 28, 1916, c. 37, Sec. 1, 39 Stat. 15.)"

5 U. S. C. 648.

"Sec. 652. *Removals from classified civil service only for cause.* No person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation."

5 U. S. C. 652.

"Sec. 851. *Persons entitled to federal employment preferences.* In certification for appointment, in appointment, in reinstatement, in re-employment, and in retention in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service; (b) the unclassified civil service; (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by

Acts of Congress or Presidential Executive order; and (d) the civil service of the District of Columbia, preference shall be given to (1) those ex-service men and women who have served on active duty in any branch of the armed forces of the United States and have been separated therefrom under honorable conditions and who have established the present existence of a service-connected disability or who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the Veterans' Administration, the Department of the Army or the Navy Department; (2) the wives of such service-connected disabled ex-servicemen as have themselves been unable to qualify for any civil-service appointment; (3) the unmarried widows of deceased ex-servicemen who served on active duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and who were separated therefrom under honorable conditions; and (4) those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and have been separated therefrom under honorable conditions. (June 27, 1944, ch. 287, Sec. 2, 58 Stat. 387, amended July 26, 1947, c. 343, Title II, Sec. 205 (a), 61 Stat. 501.)"

5 U. S. C. 851.

"Sec. 861. *Reduction in personnel; considerations affecting release.* In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings; Provided, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: Provided further, That preference employees whose efficiency ratings are 'good' or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below 'good' shall be retained in preference to competing nonpreference employees who have equal or lower efficiency

ratings: And provided further, That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions. (June 27, 1944, ch. 287, Sec. 12, 58 Stat. 390.)”

5 U. S. C. 861.

“Sec. 863. Discharge, suspension, etc., only for cause; reason in writing; advance notice; personal appearance; findings and recommendations. No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay or reduction in rank or compensation is sought shall have at least thirty days’ advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision; *Provided*, That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its find-

ings and recommendations to the proper administrative officer and shall send copies of same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such corrective action as the Commission may declare any such preference eligible who may have been dismissed or furloughed without pay to be eligible for the provisions of section 864 of this title. (June 27, 1944, ch. 287, Sec. 14, 58 Stat. 390, amended Aug. 4, 1947, c. 447, 61 Stat. 723.)”

5 U. S. C. 863.

Executive Order 4240 provided in part as follows:

“EMPLOYEES ELIGIBLE FOR MILITARY PREFERENCE

“1. Executive order of March 3, 1923, will be construed to require that in selecting employees to be demoted or separated on account of any reduction of working forces honorably discharged soldiers, sailors, and marines, and the widows of such, and the wives of injured soldiers, and marines, who themselves are not qualified for positions in the Government service, will be placed at the top of the lists of competing employees, in the order of their ratings, provided they attained for the last rating period an efficiency rating of not less than 80; and they will be retained in existing status, if their record in respect to deportment, attitude and attendance is satisfactory, in preference to all other persons with whom they are respectively in competition.

“2. When preparing lists from which to select employees for demotion or separation on account of reduction of force, credits for length of service will be added to all efficiency ratings of 65 or higher, as follows:

- “0.1 for the first full year of Government service.
- “0.2 for the second full year of Government service.
- “0.3 for the third full year of Government service.
- “0.4 for the fourth full year of Government service.
- “0.5 for the fifth full year of Government service.
- “0.6 for the sixth full year of Government service.
- “0.7 for the seventh full year of Government service.
- “0.8 for the eighth full year of Government service.
- “0.9 for the ninth full year of Government service.

and one point for each year thereafter, except that the maximum credit for length of service shall not exceed 25 points. The period of service shall be computed from the date of original employment, whether as a classified or unclassified employee in the civil service of the United States, and shall include periods of service at different times and services in one or more departments, branches, or independent offices of the Government, and shall also include service performed under authority of the United States beyond seas, and honorable service in the Army, Navy, Marine Corps, or Coast Guard of the United States: Provided: That all periods of separation from the service and so much of any period of leave of absence as may exceed six months shall be excluded. Credit will not be given for service rendered beyond retirement age. For example, an employee with 10 years of service, whose efficiency rating was 70, would receive a demotion or separation rating of 75.5 while one with 30 years or more of service and a rating of 70 would receive a demotion or separation rating of 95. Demotions and separations from each class heretofore or hereafter established by the Personnel Classification Board will be made in order beginning with the employee having the lowest rating, except that an employee with a higher rating may be demoted or separated in preference to another with a lower rating, if the duties of the position to be retained cannot be acceptably performed by the employee with the higher rating after reasonable preliminary training period. Honorably discharged soldiers, sailors, marines, and widows of such, and the wives of injured soldiers, sailors, and marines, who are not qualified for positions in the Government service, whose efficiency ratings are below 80 and therefore are not entitled to military preference, will, after having received services credits to which they are entitled, compete with other employees not entitled to military preference."

Executive Order 5068 amended paragraph 5 of Civil Service Rule XII (see note 15, supra, p. 26) as follows:

"5. In harmony with statutory provisions, when reductions are being made in force, in any part of the classified service, no employee entitled to military preference in appointment shall be discharged or dropped or reduced in

rank or salary if his record is good, or if his efficiency rating is equal to that of any employee in competition with him who is retained in the service." (Italics supplied.)

5 C. F. R., 1943 Supp., 12.301-12.313.

QUESTIONS ARISING ON APPEAL.

The plaintiffs assert that the Court below erred in sustaining the defendants' motion for a summary judgment in each case. That under the undisputed facts, and the law applicable thereto each of the plaintiffs had a preferential right to the grade and position from each was reduced in grade, the position still existing but being filled by other employees who are not honorably discharged soldiers or sailors of the United States.

ARGUMENT AND BRIEF.

The plaintiffs with the exception of the plaintiff, Hunter, are all honorably discharged soldiers and sailors who served during war time periods. Their rights to preference in their employment arise from all of the Acts of Congress, and Executive orders which were promulgated to extend to honorably discharged soldiers or sailors preference in governmental service.

The plaintiffs all assert that the reductions in their various grades arose from a reduction in the force in the Philadelphia Naval Shipyard. Following the cessation of actual hostilities in World War II the force in the Philadelphia Naval Shipyard which numbered some 45,000 employees had been reduced to the number of approximately 9,200 at the time that the plaintiffs were reduced in grade in the design section of the said Naval Shipyard.

The evidence in this regard is not disputed. Let us examine the deposition of Edwin H. Schantz, who testified by deposition in all of the cases.

**RESUME OF THE DEPOSITION OF
EDWIN H. SCHANTZ.**

Upon direct examination this witness who was the Industrial Relations Officer of the Philadelphia Naval Shipyard testified as follows:

Q. I believe you testified, Commander, that on V-E Day approximately 45,000 persons were employed, including personnel of every classification, in the Yard at that time. Will you state, if you know, how many persons are employed in the Philadelphia Naval Yard at the present time?

A. There are at present slightly over 9,200 employees on the rolls of the Philadelphia Naval Shipyard.

Q. That includes personnel of every type and character that you embraced in this 45,000 figure, does it?

A. Yes, sir.

Q. So that since V-E Day there has been, if I am correct in this, a reduction in force from 45,000 to 9,200 at the present time?

A. Yes, sir. * * * * * (Dep. 9)

Q. So there have been approximately 35,800 employees of the Yard who have been separated from the service since V-E Day. Is that approximately right?

A. Yes.

Q. After V-E Day when did those reductions start?

A. To the best of my knowledge, they started within a month after V-E Day—V-J Day.

Q. V-J Day. That would be some time in '45, wouldn't it?

A. Yes, sir. * * * * * (Dep. 10)

Q. Do you have any records there, Commander, of how many personnel you had at the time you assumed the job on April 1, 1946?

A. No, sir, I do not.

Q. Well, do you know of your own recollection how many there were?

A. I would estimate approximately 25,000.

Q. So there had been about 20,000 let out between the time of V-J Day and the time you took over on April 1, 1946?

A. That is the best of my knowledge.

Q. Since April 1, 1946, as Industrial Relations Officer you have reduced the force from 25,000 to 9,200?

A. Yes, sir.

Q. And you have in that capacity as Industrial Relations Officer had more or less supervision over that, haven't you?

A. Yes, sir.

Q. Give us the breakdown, if you have it before you, of the number that was let out, which would be approximately 15,800, since you took over. Is that right?

A. Yes, sir. * * * (Dep. 11)

Q. In other words, ever since April 1, 1946, there has been a gradual reduction in the force?

A. Up until about three or four months ago, yes, sir.

Q. When is the last time that you made a reduction in force?

A. A reduction in force was made last week. There have been temporary employees who were hired for a specified length of time for job employment, and the job was finished and they were separated. * * (Dep. 13)

Q. Your number of supervisors that you have, like leading men and quartermen and masters, are determined by work-load, I assume; is that right?

A. The allowable percentage is determined on the number of mechanical or ungraded employees present.

Q. In other words—

A. And that in turn is determined by work-load, ceilings, funds.

Q. In other words, you mentioned a moment ago that it was seven percent. Do you mean by that that you have say one hundred men and you have seven supervisors?

A. That is the maximum permissible ratio allowed us by the Bureau of Ships.

Q. In other words, you allow seven supervisors to one hundred say ungraded employees?

A. That is correct, sir.

Q. When the reduction in force came you had to get rid of or did get rid of 15,800 men; is that right?

A. Approximately, yes, sir.

Q. Well, as the reduction in force took place, naturally, you had a ratio of more than seven percent to the number of men that you had?

A. That is correct, sir. * * * * (Dep. 15)

Q. When those individuals, leading men and quartermen and so on and so forth, who may have been called supervisors—when a demotion was made, was that made on the recommendation of yourself or your other officials in your office, or was it made on the recommendation of the master?

A. The line operating departments requested that we reduce the number of supervisors. After the request was made we followed the rules and regulations established by the Civil Service Commission in determining which ones should be demoted or separated. In the case of war-service supervisors, and we had—do you understand the distinction between war-service and permanent supervisors? If there were no war-service employees in the lower grade and we had war-service appointees in the supervisor levels, they were reached by the reduction in force. If we had permanent supervisors, it was customary to demote them to the next lower grade.

Q. Then you made a decision as to who you were keeping as quartermen and also as leading men pursuant to Section 14 of the Veterans Preference Act as what would promote the efficiency of the service?
* * * * (Dep. 16)

A. If the line operating department made no determination or no distinction as to which supervisors they wanted to keep, we followed the retention order as established on our retention registers. If the line operating department, on the other hand, arrived at the decision that they could promote the efficiency of the service by retaining certain supervisors other than those at the bottom of the retention register, or at the top of the register, then they compared qualifications of the individual supervisors and we demoted on the basis of retaining the people with the higher qualifications in the particular levels.

Q. If the master didn't make a recommendation, who, in your department, made those recommendations?

A. We made no recommendations. We just selected them from the bottom of the list.

Q. Who made the selections, Commander?

A. The people in the Reduction Force Section.
* * * * (Dep. 17)

Q. When you took over on April 1, 1946, there was at that time, due to the fact that the war was then over, a surplus of personnel in the Philadelphia Navy Yard?

A. The surplus wasn't due to the fact that the war was over necessarily. As I say, our ceilings and numbers were established by several factors, one of which was ceiling limitations established primarily by the Bureau of the Budget and then to the Bureau of Ships and handed on down the line; another was the amount of money available to complete the work as allocated by the Bureau of Budgets and Bureau of Ships; and three was the work actually present in the Yard at the time.

Q. Did you have a work-load at that time to justify the personnel which you had?

A. I wasn't familiar with the total work-load on 1 April, 1946.

Q. Why did you let these 15,800 men go from the time of April 1, 1946, down to the present time?

A. For one of the three reasons just previously outlined, sir.

Q. In other words, it was due first to the fact that you didn't have the budget; is that correct?

A. That is one of the factors that might have accounted for it.

Q. Congress had cut your budget?

A. Yes, sir.

Q. Second, you didn't have the work for them?

A. That's right. * * * (Dep. 21)

Q. You didn't have the work for them to do. And I believe you said there were four reasons. What are the other two?

A. Three reasons, sir. The third was the control of expenditures by the Bureau of the Budget establishing personnel ceilings which limited your expenditures regardless of the amount of money you had. Do you understand that distinction?

Q. In other words, the Bureau of the Budget had even gone further and cut your appropriations further?

A. They have several times controlled expenditures by controlling the number of personnel you could have on your payrolls; yes, sir.

Q. So those three factors, Commander, were the reasons why you had to reduce your force from 25,000 to 15,800?

A. Any one or any combination of those three may have been the reason during that period for reducing the force, yes, sir. * * * (Dep. 22)

Q. Since April 1, 1946, there have been what are generally known as demotions in grade in the Philadelphia Shipyard, have there not?

A. Yes, sir.

Q. And those so-called demotions in grade have been due to the * * * (Dep. 23) fact that you have been trying to maintain this seven percent average on your supervisors?

A. That is correct, sir.

Q. Well, now, is electrical engineer an ungraded or graded—

A. Graded, sir.

Q. How many graded positions did you have in the Philadelphia Navy Yard when you took over on April 1, 1946?

A. There must have been approximately 2,500 or 3,000 graded positions at that time, sir.

Q. How many are there now?

A. Approximately 1,650, sir.

Q. In other words, there has been 850 of those persons who have been discharged? .

A. Yes, sir.

Q. Those 850 who were discharged in the graded positions, were their discharges due to the same three factors that you mentioned here as causing a reduction in all of the personnel of your * * * (Dep. 24) departments?

A. They were due to that and in addition we had quite a great number of voluntary separations at the end of the war, particularly among the graded people who apparently felt some insecurity in the Shipyard and were going out to get themselves other positions. Also quite a few of the graded positions included in that 850 were occupied by female employees who apparently felt no need to work at the end of the war. So we have to add another cause there to the reason for separation, although it wasn't necessarily for separation. It is most probably as a voluntary separation on the individual's part in many cases.

Q. But you haven't any statistics on that, do you, Commander?

A. No, sir. The difference in number is between 2,500 and possibly 1,650 at the present day. * * * (Dep. 25)

Q. How many graded employees were in the Design Section on April 1, 1946, in the same section in which Mr. Reynolds was?

A. I can give you the figure for 28 February, 1946. It was 850 employees.

Q. How many of those, if you know, were P-4 electrical engineers?

A. As of March 1, 1946, we had 28 P-4 electrical engineers.

Q. At the present time how many do you have there?

A. The record indicates that there are at present 10 P-4 electrical engineers on the rolls. That includes the electronic engineers.

Q. Would they be in the same grade as Mr. Reynolds?

A. They are included in the same grade level, P-4.

Q. So there has been a reduction, according to that, of 18 men * * * * * (Dep. 26) in the same grade in which Mr. Reynolds has been?

A. According to the present figure that is correct, sir.

Q. Let me ask you this question then in reference to the Reynolds case. The number of personnel in the so-called Design Branch Planning Department is somewhat less than it was when you took over on April 1, 1946?

A. Yes, sir.

Q. Will you give us, covering all men in graded positions and otherwise—

A. On 28 February, 1946, the record indicates that there were 580 technical men in the Design Section and 187 clerical positions. As of 28 February, 1947, there were 219 technical and * * * * * (Dep. 27) 51 clerical. That figure is approximately correct for today.

Q. In other words, there has been a substantial reduction in the Design Branch of the Planning Department; is that correct?

A. That is correct, sir.

Q. Did you have supervision over him as Personnel Assistant?

A. I did.

Q. In other words, he was one of your assistants; is that correct?

A. Yes, sir.

Q. Do you know an electrical engineer P-4 whose name is J. F. McNeff?

A. I know who the man is, but that is all. I don't know him personally.

Q. Do you know him on the basis of the familiarity with your records in your office?

A. Yes, sir. (Dep. 28)

Q. Is he still employed at the Philadelphia Naval Shipyard in the capacity of an electrical engineer P-4?

A. To the best of my knowledge he is.

Q. Do you know electrical engineer P-4, H. C. Nagel? Yes sir.

Q. And as far as you know, is he still employed at the Philadelphia Navy Yard as a P-4 electrical engineer?

A. He is.

Q. Do you know electrical engineer P-4, J. W. Best?

A. I do.

Q. Is he, as far as you know, still employed as an electrical engineer P-4 at the Philadelphia Navy Yard?

A. He is.

Q. Do you know electrical engineer P-4, J. B. Hasson?

A. I do.

Q. Is he still employed at the present time as an electrical engineer P-4?

A. He is.

Q. And at the time Mr. Reynolds was given a notice of proposed change to lower grade because of reorganization, those four men whom I have just asked you about were retained as electrical engineers P-4 in the Philadelphia Naval Shipyard?

A. They were.

Q. Commander, do you know of your own knowledge whether any of the gentlemen, Mr. McNeff, Mr. Nagel, Mr. Best or Mr. Hasson, (Dep. 29) are veterans?

A. I do not offhand.

Q. On April 28, 1947, were Mr. McNeff, Mr. Nagel, Mr. Best and Mr. Hasson in the grade of electrical engineer P-4?

A. They were.

Q. Have they ever been in a higher grade that you know of?

A. I believe they were.

Q. Is your answer to that just your belief or do you have any records on it?

A. I have no records available with me to indicate whether they ever held a higher grade or not.

Q. Then you really don't know of your own knowledge, do you, Commander?

A. No, sir.

Q. These four men, Mr. McNeff, Mr. Nagel, Mr. Best and Mr. Hasson, are now four of the employees embraced in the 200 which you said were still the graded employees in the Yard?

A. They are, sir.

Q. Still employed there?

A. Yes, sir.

Q. And since the institution of the suit by Mr. Reynolds against James Forrestal, these men have been kept on the job there continuously?

A. I believe they have, sir. * * * (Dep. 30)

Q. How many technical employees did you have in '38 then?

A. We had 246 technical and 35 clerical on 1 March, 1938.

Q. Then your Design Branch has even been reduced to less than the peacetime level in '38?

A. It has, sir. It has been reduced by 11 employees, the difference in the total being 281 to 270.

Q. And this reduction, Commander, if you know, was due to the fact that the Yard was trying to get back to its peacetime level, wasn't it, or approximately near there?

A. The Yard was trying—

Mr. Friedman: Just a minute, Commander. What reduction? You said this reduction unrelated—

Mr. Dawson: The reduction from the time he took it over here from April 1, 1946, or from V-J Day down to the present time. I am talking about all the reduction through there.

The Witness: The reduction has taken place because of limitations on funds and limitations on ceiling and limitations on work-load.

BY MR. DAWSON:

Q. In other words, the same three factors that you testified to a while ago have been accountable for the reductions in force that have been made in the Design Branch; is that correct? * * * (Dep. 34)

A. That is correct. * * * (Dep. 35)

Q. When was it reduced?

A. Some time between 1 March, 1946, and 25 July, 1947, the number of electrical engineers P-5 on the roll was changed from 8 to 5, not necessarily by reduction in force but it may have been by reassignment.

Q. Commander, I would like to have you tell me the history of the Design Branch in terms of number of personnel, starting with 1938 to the present time. Have you made a study of that, Commander?

A. I have. The records indicate that the following is the history. * * * (Dep. 50)

	<i>Technical</i>	<i>Clerical</i>
1 March, 1938	246	35
1 March, 1939	320	42
4 March, 1940	415	58
8 March, 1941	732	94
6 March, 1942	909	182
6 March, 1943	942	247
7 March, 1944	907	255
10 March, 1945	857	274
28 Feb., 1946	580	187
28 Feb., 1947	219	51

Q. Could you tell me the number as of today?

A. There are 270 employees on the rolls as of today.

Q. Could you give us a breakdown as to the technical and clerical?

A. There are 218 technical employees and the remainder clerical out of 270. * * * (Dep. 51)

A. Yes, sir. The first reduction in force began on October 25, 1945.

Q. This is for the Design Branch?

A. For the Design Branch only. That affected:

Naval Arch. P-2	—	4
Eng. Dftmn (Ship)	SP	— 3
Eng. Dftmn	SP-8	— 1
Eng. Dftmn (Ship)	SP-7	— 1
All. Aide	SP-6	— 1
All. Aide (Ship)	SP-6	— 1
All. Aide (Ship)	SP-5	— 7
All. Aide	SP-5	— 1
All. Dftmn (Ship)	SP-4	— 3
All. Dftmn	SP-4	— 1
All. Dftmn M E & P	SP-4	— 1
All. Dftmn	SP-3	— 9
All. Dftmn	SP-2	— 1

The second reduction occurred—

In other words, Commander, the drop from 857 technical in March, 1945, to 219 in February of 1947, is not necessarily as a result of separations brought about by the Navy Department?

A. Not at all, sir. There were many voluntary separations. * * * * * (Dep. 52)

Q. The separations that we are talking about here are going to be separations caused by the Navy Department.

A. I see.

Q. When was the next reduction in force?

A. The next reduction in force was scheduled between October 25, 1945, and March 1, 1946. It indicates that the following grades and titles were affected by such a reduction in force.

		Non- Veteran	Veteran	Total
Elec. Engr.	P-4	1		1
Nav. Arch.	P-3	18	1	
Elec. Engr.	P-3	3		
Mar. Engr.	P-3	2		
Allow. Engr.	P-3	1		25
Nav. Arch.	P-2	6		
Mech. Engr.	P-2	1		
Mar. Engr.	P-2	2		
Elec. Engr.	P-2	2		11

				<i>Non- Veteran</i>	<i>Veteran</i>	<i>Total</i>
Eng. Dftmn.	Ship	SP-8	11	1		
"	"	SP-8	2	1		
"	ME&B	SP-8	4			
"	Elec.	SP-8	6			
"	Mech.	SP-8	2			
"	Ord.	SP-8	1		28	
Eng. Dftmn.	Ship	SP-7	6			
Allow. Aide		SP-7	2			
Eng. Dftmn.	Pip.	SP-7	2			
"	ME&B	SP-7	6			
"	Mech.	SP-7	2			
"	Elec.	SP-7	3		21	
Eng. Dftmn.	Ship	SP-6	4			
"	Pip.	SP-6	1			
"	ME&B	SP-6	5			
Eng. Dftmn.		SP-6	3			
"	Elec.	SP-6	1			
Eng. Aide		SP-6	1		15	
* * * (Dep. 53)						
Eng. Dftmn.	Pip.	SP-5	2			
"	ME&B	SP-5	5			
"	Elec.	SP-5	6			
"	Mech.	SP-5	1	1		
"	Ord.	SP-5	1			
"	Ship	SP-5	1			
Eng. Dftmn.		SP-5		1	18	
Eng. Dftmn.	ME&B	SP-4		1		
Eng. Aide		SP-4	1	1		
Eng. Dftmn.	Elec.	SP-4	9			
Eng. Dftmn.		SP-4	1		13	
Eng. Dftmn.	Gen.	SP-3	2			
"	Elec.	SP-3	3		5	
Eng. Dftmn.		SP-2	1			
"	Gen.	SP-2	1		2	

Total in that reduction in force 139

Q. Following that reduction in force what was the distribution of grades between veterans and non-veterans?

A. As of 1 April following the reduction in force just listed?

Q. As of 1 April, 1946.

A. The distribution of grades, veterans and non-veterans was as follows:

	<i>Non-Veteran</i>	<i>Veteran</i>
SP-4		6
SP-5		10
SP-6	1	10
SP-7	11	9
SP-8	26	6
P-1		1
P-2	5	
P-3	152	29
P-4	116	13
		* * * (Dep. 54)
P-5	35	7
P-6	13	1
P-7	1	
Total	363	92
Total		455

Q. That is only the technical?

A. Only the technical personnel.

Q. Technical personnel in the Design Branch?

A. That is correct.

Q. That doesn't include the clerical force?

A. No, sir. The clerical force at that time numbered 149.

Q. When was the next reduction in force?

A. The next reduction in force was effective 26 April, 1946, which reduced the staff as follows: they are all non-veterans.

P-3

Nav. Arch.	28
Mar. Engr.	16
Elec. Engr.	8
Allow-Engr.	1

P-2

Mar. Engr.	1
------------	---

SP-8

Eng. Dftmn. Ship	2
“ “	1
“ “ Elec.	3
“ “ ME&B	1
Eng. Aide	1

SP-7

Eng. Aide Ship	1	
Allow. Aide	1	*** (Dep. 55)

SP-6

Eng. Aide	1
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Total 65

In addition to the 65 technical people there was a reduction of 20 in the clerical force.

Q. Did I understand you to say that all the people separated in this reduction in force were not veterans?

A. That's right, sir.

Q. From time to time were veterans returning who were placed back to work?

A. We had numerous veterans returning who were exercising their statutory reemployment rights and they were put back to work.

Q. And that took place in between these reductions in force?

A. That is correct, sir.

Q. When was the next reduction in force, Commander?

A. The next reduction in force was effective 24 June.

Q. What year?

A. 1946.

Q. Would you give the details of that reduction in force?

A. That reduction in force was as follows:

	<i>Non-Veteran</i>	<i>Veteran</i>
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P-4

Nav. Arch.	1
------------	---

P-3

Nav. Arch.	13
Ord. Engr.	1

*** (Dep. 56)

	<i>Non-Veteran</i>	<i>Veteran</i>
Mech. Engr.	1	
Mar. Engr.	6	1
Allow. Engr.	1	
Elec. Engr.	6	
<i>P-2</i>		
Nav. Arch.	1	
Mar. Engr.	2	
<i>SP-8</i>		
Eng. Dftmn. (Pip)	1	1
“ “ (Ship)	2	
<i>SP-7</i>		
Eng. Dftmn. Ship	2	
<i>SP-6</i>		
Eng. Dftmn. Elec.	1	1
Eng. Aide		1
<i>SP-5</i>		
Eng. Dftmn.		1
“ “ ME&B		1
<i>SP-4</i>		
Eng. Dftmn. Elec.		1
“ “ Pip.		1
Giving total of	38	8

Or a total net reduction in force of 46. * * * (Dep. 57)

Q. Can you give me now what the distribution of jobs in the technical staff of the Design Branch was following this final reduction in force?

A. Following the final reduction in force it was as follows:

	<i>Non-Veteran</i>	<i>Veteran</i>
SP-3		1
SP-4		3
SP-5		4
SP-6		9
SP-7		14
SP-8		10
P-1		1
P-2		3

* * * (Dep. 61)

	<i>Non-Veteran</i>	<i>Veteran</i>
P-3	16	27
P-4	62	17
P-5	33	7
P-6	12	1
P-7	1	
Leaving a total of	124	97

* * * (Dep. 62)

Q. Well, what happened then? Why did you reduce these people then?

A. As I previously explained in my testimony just a minute ago, the Design Director decided what people he was going to need to do the work during the months of November, December, January, February and March. And on the basis of that prior to his last reduction decided in what levels to invoke the * * * (Dep. 81) reduction in force.

Q. Those people were regraded because there had been a reduction in force?

A. No, sir.

Q. Do you want to argue about that point or do you want the facts to stay the way they are?

A. The facts are as I have stated.

Mr. Friedman: I wish you would let the Commander explain it. I think he is entitled to explain it since you asked him the question.

Mr. Dawson: Very well. Let him explain it then.

The Witness: The Design Director determined what grades and levels and what numbers he was going to have to perform the work on hand, not in some future date but at the time, being during the months of November, December, January, February and March. So on the basis of that decision he invoked a reduction in force at the levels required, which ended up with the Design Section as it was after the separation of 15 January.

Then he was later faced with the problem of reorganization, not according to his line of thinking but according to the directives from the Bureau which established a standard pattern not for the Philadelphia

Shipyard alone but four other shipyards which were designated Class A Design Yards. And in order to achieve uniformity we had to conform with the Bureau's directives. * * * (Dep. 82)

Now, that required a shifting of grade levels because we ended up with more P-6's and more P-5's than shown in the standard organization. * * * (Dep. 83)

OTHER EVIDENCE IN THE RECORD.

That the so-called organization of the design branch of the Philadelphia Naval Shipyard was due to a reduction in the force in the said Naval Shipyard is clear from the testimony of the witness Schantz set forth hereinbefore. In each case the affidavit of one Charles R. Peck (App. 7-9) was filed in support of the motion for a summary judgment.

That the Bureau of Ships, in the interest of promoting the efficiency of the service, utilized to the utmost the service of all of the facilities to correct the unsatisfactory situation resulting from necessary staffing during the wartime period; that it was apparent prior to the reorganization that the Design Branches at the various shipyards, as a result of reductions in force and normal personnel attrition, were top-heavy in the number of personnel occupying the higher grade positions; that the conditions surrounding the wartime organization no longer existed and were no longer applicable to peacetime conditions; that in view of this the Bureau of Ships proceeded to establish a new organization for the purpose of taking over the work of the old Design Branches; that as a consequence of the establishment of a new organization it became necessary to allocate new positions; that the Bureau of Ships directed the various shipyards, including the Philadelphia Naval Shipyard, to utilize the service of all personnel in the old organization in the new organization; that due to the limitations imposed by the Bureau of Ships as to the numbers and grades of new positions in the new organization some employees were "down-graded", that is, reassigned to positions of lower grade than they occupied in the old organization; and that the plaintiff was one of those "down-graded"; (from Electrical Engineer, P-5, to Electrical Engineer, P-4).

This affidavit is in almost identical language in each case (App. 8, 9, 27, 48, 74), insofar as the so-called reorganization of the design branch was concerned. The affidavit shows that the so-called reorganization of the design branch was due to the reductions in force in the Philadelphia Naval Shipyard.

In this respect the affidavit of Charles R. Peck, Industrial Relations Assistant, Bureau of Ships, having the control of the Philadelphia Naval Shipyard conforms to the testimony which Commander Schantz gave by his deposition. Not only does the affidavit show that the so-called reorganization was due to the reduction in the design branch, the testimony of Commander Schantz shows (Dep. p. 51) that the personnel in the design branch had actually been reduced from number on March 7, 1944 of 907 employees in the technical branch and 255 clerical employees to 217 on February 28, 1947 in the technical branch and 51 clerical employees, the peak of the personnel load being on March 6, 1943, when they had 942 employees in the technical branch, and 247 clerical employees. The reduction on February 28, 1947 was even lower than the number of employees in the branch design on March 1, 1938, when they had 246 technical employees, and 35 clerical, and that was when the United States was at peace.

From the foregoing evidence of record in the Court below, and which is part of the record in each of these cases, the plaintiffs assert without fear of contradiction that the down grading of the plaintiffs in each instance arose from a reduction in the force in the Philadelphia Naval Shipyard.

Based upon the premise that the down grading of the plaintiffs resulted from a reduction in force in the Philadelphia Naval Shipyard what then are the rights of the plaintiffs, who are admitted are entitled to preference in their employment. The undisputed fact is that the positions from which they were downgraded still exist and each of the said positions from which they were downgraded are now filled by employees who are not honorably discharged

soldiers or sailors, or who have no preference rights to the positions.

The rights of these plaintiffs must flow from statutory enactments of Congress, and the Executive Orders of the President of the United States. The plaintiffs assert that so long as their efficiency ratings are good or better they have a preference right to their job positions in governmental service. In asserting that contention they ask that the Court examine the legislative history of the laws granting preference to honorably discharged soldiers and sailors of the United States in governmental service.

It has been the settled policy of the United States for a period of over 70 years to extend benefits with respect to employment and retention in government service to those who have served in its armed forces. Retention preference was first granted veterans by the Act of August 15, 1876, c. 287, P. 3, 19 Stat. 143, 169, 5 U. S. C. 37, which provided in part as follows:

* * * In making any reduction of force in any of the executive departments, the head of such department shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors.

This legislative policy was broadened and affirmed by the Act of August 23, 1912, c. 350, P. 4 (37 Stat. 360, 413), which contained the following proviso:

* * * in the event of reductions being made in the force in any of the executive departments no honorably discharged soldier or sailor whose record in said department is rated good shall be discharged or dropped, or reduced in rank or salary.

Although the foregoing statutes did not provide a centralized authority for administration, they clearly constituted an unconditional Congressional mandate to the executive branch to accord veterans absolute retention preference

over non-veterans, without regard to relative length of service and subject only to the requirement of a good efficiency rating.

Subsequent executive orders and regulations implemented and explained the legislative policy established by the foregoing statutes. Pursuant to Section 4 of the Act of August 23, 1912, supra, the President, by Executive Order 3567 of October 24, 1921, directed that, in the event of demotions and dismissals of personnel in the classified departmental service, "honorably discharged soldiers and sailors whose ratings are good shall be given preference in selecting employees for retention." On March 3, 1923, retention preference was extended to veterans in the field service by Executive Order 3801, and in 1936, by order of the President, to government positions not under civil service. While length of service was given limited recognition for retention purposes for the first time by Executive Order 4240 of June 4, 1925, that order reaffirmed the policy of granting absolute retention preference to veterans with "good" or better efficiency ratings. Only as against veterans with efficiency ratings lower than "good" were non-veterans given retention rights by reason of greater length of service. This limited recognition of length of service was further narrowed by Executive Order 5068 of March 2, 1929, which provided that, where the efficiency ratings of both veteran and nonveteran were equal, but both were less than good, the veteran had an absolute retention preference irrespective of length of service.

Finally, it is of great significance that the reduction-in-force regulations which the Commission promulgated on July 31, 1943, and which remained in effect for almost a year, immediately prior to enactment of the Veterans' Preference Act of 1944, gave effect to military preference and length of service in the same manner as the present regulations. Specifically, the 1943 regulations gave retention preference, as between permanent employees in each grade, to (a) veterans with efficiency ratings of "Good" or better

over non-veterans with ratings of "Good" or better, and (b) veterans with "Fair" efficiency ratings over non-veterans with "Fair" efficiency ratings. As in the present regulations, length of service and high efficiency ratings were reflected in retention credits which determined the order of release within each category. It is this treatment of military preference and length of service which Commissioner Flemming referred to when he told the Senate Committee on Civil Service, apropos of the first clause of Section 12, that "our existing reduction-in-force regulations are in harmony with that." In brief, Congress was informed that under Section 12 the Commission would continue to give effect to the factors of military preference and length of service in the same manner as it had done in the existing regulations adopted in 1943. Here too, is the true explanation of the Commission's objection to Section 12 as originally drafted to require release of employees in the inverse order of total Federal service (including military service), on the ground that consideration should be given to the relative efficiency of employees. In the light of the 1943 regulations, it is perfectly clear that the Commission was only concerned that the original draft would preclude it from giving preference to nonveterans with "Good" efficiency ratings over veterans with lower ratings and from giving any retention credits for efficiency. Cf. Pet. Br. 50-54.

From the foregoing it is clear that, from 1876 until the enactment of the Veterans' Preference Act of 1944, the Government had followed a continuous policy of granting to veterans with "good" or higher efficiency ratings absolute preference in retention in employment over nonveterans without regard to length of service.

The rights to preference in government employment given to the plaintiffs as honorably discharged soldiers and sailors flow not only from the statutes and executive orders in force on June 27, 1944, but from the provisions of the Act of June 27, 1944.

From the testimony referred to in the resume of the evidence it is believed that the undisputed evidence shows that the downgrading of the plaintiffs in their positions arose from a "reduction-in-force" in the Philadelphia Naval Shipyard following the close of World War II. In fact, the undisputed evidence shows that the number of employees in the so-called design section is less now than it was during the peace time period in the year 1938.

Not only are the three plaintiffs, Miller, Reynolds and Whipple protected under the 1912 statute extended by Executive Order No. 3801, March 3, 1923, but are also protected under the provisions of Section 12 (58 Stat. 390 5 U. S. C. 861) of the Veterans' Preference Act of June 27, 1944. This section relates to a reduction in force, and provides in part as follows:

In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: Provided, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: Provided further, That preference employees whose efficiency ratings are "good" or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below "good" shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings: And provided further, That when any or all of the functions of any agency are transferred to, or when any agency is replaced, by some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions. June 27, 1944, c. 287, P. 12, 58 Stat. 390.

Commissioner Flemming of the Civil Service Commission at the Senate hearings explained the purpose of Section 12 of the June 27, 1944 Act, he said:

“That proviso is substantially the same as a law passed by Congress in 1912, which was interpreted to apply only the departmental service. By Executive Order March 3, 1923, the provisions of the law of 1912 were likewise extended to the Federal service, so that the last proviso simply continues what has been in practice throughout the entire Federal service since 1923.” (Senate hearing 78th Cong. 2d Sess. S. 1762 & H. R. 4115, page 27.)

If the provisions of Section 12, *supra*, mean what Commissioner Flemming stated it to mean, then the provisions of the 1912 statute providing that in the event of reductions in force in any of the executive departments no honorably discharged soldier or sailor whose record is good shall be discharged, or reduced in rank and grade.

The Veterans' Preference Act of June 27, 1944, covers all agencies, bureaus, and departments of government either temporary or permanent. It covers more than the 1912 statute because it also provides that a veterans preference eligible whose rating is less than good shall have preference over a non-veterans employee with the same rating.

The plaintiffs again assert that their demotions in grade and rank arose from a reduction-in-force in the Philadelphia Naval Shipyard. If so, the provisions of Section 12, *supra*, clearly applies to their cases. The attention of the Court is directed to the following provision of this Section to wit:

“Provided further, That preference employees whose efficiency ratings are ‘good’ or better shall be retained in preference to all other competing employees, and that preference employees whose ratings are below ‘good’ shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings” * * *

All of the plaintiffs, Reynolds, Miller and Whipple, who fall within the Veterans Preference Act of June 27, 1944, have good or better efficiency ratings. They were entitled to preference in retention in their relative positions from which they were downgraded both in grade and salary. Section 12 means that they have this preference rights or they have no preference rights at all. If the Section means what Commissioner Flemming said that it was intended to mean, then their reductions in grade and salary are clearly a violation of the Section. All of the employees who now fill their positions are nonpreference employees.

The plaintiffs do not concede that Section 14 of the Act of June 27, 1944 (58 Stat. 390, 5 U. S. C. 863) applies to their cases because the downgrading of the plaintiffs clearly arose from a reduction-in-force of the Philadelphia Naval Shipyard. It is however the contention of the defendants that the plaintiffs could be downgraded under the provisions of section 14 which provides as follows:

No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinafter referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative

officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: Provided, That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative office and shall send copies of the same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such corrective action as the Commission finally recommends: Provided further, That the Civil Service Commission may declare any such preference eligible who may have been dismissed or furloughed without pay to be eligible for the provisions of section 864 of this title. June 27, 1944, c. 287, p. 14, 58 Stat. 390, amended Aug. 4, 1947, c. 447, 61 Stat. 723.

The attention of the Court is directed to the language "for such cause as will promote the efficiency of the service".

The defendants take the position that an administrative official by the exercise of his discretion may effectively destroy the entire Veterans Preference Acts, by the simple method of find that a nonpreference employee is better qualified for a position than the preference eligible.

The words "except for such cause as will promote the efficiency of the service" were borrowed from the Act of August 24, 1912, (c) 389 Par. 6, 37 Stat. 555, 5 U. S. C. 652). This statute relates to removals from the classified civil service for cause only. It provides that no person in the classified civil service of the United States shall be removed therefrom except for "such cause as will promote the efficiency of said service".

The words "except for such cause as will promote the efficiency of said service" are not defined by statute. The plaintiffs are reliably informed that from the year 1912

when this statute was enacted until at least the year 1946, the Civil Service Commission had always ruled that the words in question applied only to inefficiency, misconduct, or the commission of a penal offense, and never during this 34 years did the Civil Service Commission rule that under this language the government officials could compare the relative qualifications of employees who had efficiency ratings of good or better such as was done in these cases. The plaintiffs therefore assert that when Congress wrote the same language into the Act of June 27, 1944, it adopted the construction placed on the identical language as then it was construed by the Civil Service Commission. The Chief Law Officer of the Civil Service Commission in a memorandum to the Civil Service Committee of the House of Representatives dated April 10, 1947, stated as follows:

* * * The phrase "such cause as will promote the efficiency of the service" appearing in Section 14 is modeled after the language appearing in the Act of 1912. The pertinent language in the Act of 1912 is: "no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of the service" * * * It is clear that where an employee is discharged or demoted because of delinquency or misconduct such action is "for such cause as will promote the efficiency of the service".

The plaintiffs have caused the hearings on the June 27, 1944 Act to be examined, and find nothing therein which indicates that the Committees of Congress discussed what was meant by the language "except for such cause as will promote the efficiency of the service" and so the plaintiffs earnestly contend that the language cannot be construed with any broader meaning or definition than what it had been previously construed by the Commission charged with the administration of the statute from which the language was borrowed.

Under the rule of statutory construction where Congress adopts language of a statute which over a long period of

years has received a certain construction by the agency or commission charged by law with the administration of the statute it also adopts, unless the contrary appears in the statute, the construction placed on the language used.

Okanogan Indians v. United States, 279 U. S. 655, 73 L. Ed. 894.

Heald v. District of Columbia, 254 U. S. 20, 65 L. Ed. 106.

Federal Digests, Statutes Par. 225 $\frac{3}{4}$ citing many cases in point.

Furthermore, the rule of statutory construction is that where you have a specific provision of a statute covering the situation clearly it is the specific provision of the statute which governs. The facts in this case clearly show that the plaintiffs were reduced in rank and salary due to a reduction-in-force in the Philadelphia Naval Shipyard, and therefore since the Act of June 27, 1944, and the executive orders issued prior to June 27, 1944 are specific provisions relating to reductions in force and these statutes, and the executives order which apply to the plaintiff's situation even though Section 14 may be construed to mean that an administrative official in cases other than involving reductions in force may by the exercise of his discretion completely destroy the Veterans Preference Acts. This rule has long since been the law of the United States. This Court has passed upon the questions of specific provisions in a statute which are also covered by general provisions. This Court following the general rule held that the specific provisions override the general provisions.

Swiss National Insurance Co. v. Miller, 289 Fed. 571, 52 App. D. C. 173, affirmed 267 U. S. 42, 69 L. Ed. 504.

For other cases see Federal Digests Statutes par. 194 where many cases in line with the above decision are cited.

Upon the basis of the foregoing authorities, and the undisputed facts showing that the plaintiffs reduction in grade

resulted from a reduction-in-force, the plaintiffs assert that the 1912 statute, executive orders, and section 12 of the Veterans Preference Act of June 24, 1944 apply to the plaintiff's situation.

The plaintiffs, Miller, Whipple, and Reynolds, all preference eligibles under the Act of June 27, 1944 further contend that their rights not only exist under the statutes and executive orders, heretofore discussed, but also under Section 2 (58 Stat. 387, 5 U. S. C. 851), of the Act of June 27, 1944, which provides in part as follows:

Persons entitled to federal employment preferences. In certification for appointment, in appointment, in reinstatement, in re-employment, and in *retention* in civilian positions in all establishments, agencies, bureaus, administrations, projects and departments of the government and in either (a) classified civil service (b) the unclassified civil service (c) any temporary or emergency establishment *preference shall be given to* * * * (here the classes to which extended). Emphasis supplied.

The statute provides that the plaintiffs, Miller, Whipple and Reynolds are entitled to preference in retention, and the plaintiffs assert that this retention means the grade and classification for which they, as employees with a good or better efficiency rating, were qualified. That is, if the words mean anything at all.

The word "retention" was construed by Chief Justice Cardozo of the New York Court of Appeals to mean exactly as here contended. In the case of *People ex rel. Davison v. Williams*, 213 N. Y. 130, 107 N. E. 49, 50 (1914), Judge Cardozo, then Chief Justice, later Justice of the U. S. Supreme Court, held in construing the veterans preference Act of the State of New York, that the word "retention" contained in the statute meant that an employee of the city of New York who had preference rights could not be discharged where the position existed. In that case, the veteran was discharged, and a foreman who had no preference

was reduced in grade and given the position formerly held by the Veteran. It is almost the identical situation arising in these cases. Here the plaintiffs have been reduced in grade, and nonpreference employees are being retained in the positions formerly held by them. If Congress intended to give preference to veterans with good or better efficiency ratings, then it is the duty of the courts to protect those rights. Congress was certainly not enacting a Veterans Preference Act confirming prior statutes, and executive orders as a mere intention to establish such rights as a matter of principle and then leave wide open to administrative officials, by the exercise of their own discretion, the right to effectively destroy such rights and yet that is the interpretation that the defendants would have this Court place upon such statutes. Congress intended that the veteran preference eligibles should reach a standard of an employee that of having an efficiency rating of good or better and that when such preference eligibles employees had shown that they were capable employees that they should have the right to retention in their positions over and above all other employees of the government.

The plaintiff, Hunter, while he was a peace time soldier was entitled to all of the rights, benefits, and privileges afforded to such peace time soldiers because on the date of the passage of the Act of June 27, 1944 he then was in governmental service.

He was entitled to all of the rights, benefits, and privileges of the 1912 statute relating to reductions in the force of government departments which by executive order was extended to the field service.

See *Hilton v. Sullivan et al.*, 92 L. Ed. No. 17 Adv. at page 1031, footnote 8, Executive Order No. 3801 March 3, 1923, as testified to by Commissioner Flemming at the hearings, *supra*.

If the plaintiffs are correct in asserting that the reductions in grade of each of the plaintiffs arose from a reduction in the force in the Philadelphia Naval Shipyard, then

the plaintiff, Hunter, a peace time soldier has preference rights to his position. His position is being filled by non-preference employees as alleged in his complaint.

In *Hilton v. Sullivan et al. supra*, the Supreme Court in commenting on the 1912 statute stated (page 1031) that "there is nothing ambiguous about this 1912 provision. It was an absolute command that no governmental department should discharge, drop, reduce in rank any honorably discharged veteran government employee with a rating of 'good'. Length of service in no way qualified the preference given the veteran. And subsequent executive orders not only recognized this provision as giving veterans an absolute preference (Executive Order 3567, October 24, 1921), but also extended the preference to veterans in the field service (Executive Order 3801, March 3, 1923), and to veterans not under civil service (Departmental circular 146, U. S. Civil Service Commission, October 22, 1936)."

Commissioner Flemming of the Civil Service Commission said that the purposes of Section 12 of the Act of June 27, 1944 was to invoke the rule laid down by the 1912 statute. Therefore the plaintiffs having conclusively shown by the evidence in these cases that their demotions in grade resulted from a reduction in the force of the Philadelphia Naval Shipyard the violation of the statutes and executives orders is at once apparent.

See also *Wettre et al. v. Hague et al.*, 168 Fed. 2d 1024.

The *Wettre* case is squarely in point. In that case the plaintiffs were employees of the Boston Naval Shipyard and the District Court dismissed the complaint. The First Circuit not only reversed the case but held that the actions of the defendants, officials of the Boston Naval Shipyard, were in violation of the Veterans Preference Acts. While the decision is not binding upon this Court, the opinion of the Supreme Court in the *Hilton* case is so clear that no other conclusion could have been reasonably reached.

This Court has itself held that public officials must obey

the laws as enacted by Congress. In the case of *Farley v. United States*, (92 Fed. 2d 533, 67 App. D. C. 382) this Court held that a statute requiring the Postmaster General to grant an automatic raise in salary was binding on the Court as well as the Postmaster General.

CONCLUSION.

The court below clearly erred in granting the motion of the defendants for a summary judgment. These cases should be reversed with instructions to the court below to enter judgment for the plaintiffs in each case.

Respectfully submitted,

CLAUDE L. DAWSON,
Attorney for the Plaintiffs.

APPENDIX

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 9991.

MERLE V. MILLER, *Appellant*

v.

JAMES FORRESTAL, Secretary of the Navy, *Appellee*.

No. 9992.

ROSCOE G. WHIPPLE, *Appellant*

v.

JAMES FORRESTAL, Secretary of the Navy, *Appellee*.

No. 9993.

SPERRY H. REYNOLDS, *Appellant*

v.

JAMES FORRESTAL, Secretary of the Navy, *Appellee*.

No. 9994.

DAVID R. HUNTER, *Appellant*

v.

JAMES FORRESTAL, Secretary of the Navy,
HARRY B. MITCHELL, President, Civil Service
Commission,

FRANCES PERKINS, Member, Civil Service Commission,
and

ARTHUR S. FLEMMING, Member, Civil Service
Commission,

Appellees.

Appeal from the United States District Court for the
District of Columbia.

JOINT APPENDIX.

1

Filed Jul 7 1947

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

MERLE V. MILLER, 7414 Elizabeth Road, Melrose Park,
Penna., *Plaintiff*,

vs.

JAMES FORRESTAL, Secretary of the Navy, Washington, D. C.,
Defendant.

Civil Action No. 2756-47

**Suit for a Preliminary Mandatory Injunction, and for a
Permanent Mandatory Injunction and for Other Relief**

The plaintiff for his cause of action complains of the defendant and alleges:

1. That the plaintiff is a citizen of the United States, and a resident of the State of Pennsylvania, and resides at 7414 Elizabeth Road, Melrose Park, Pennsylvania.

2. That the defendant, James Forrestal, is the duly appointed, acting and qualified Secretary of the Navy, and charged by law with the administration of all laws relating to the Navy Department, and the employment of personnel, and is particularly charged by law with the administration of the Philadelphia Naval Shipyard.

3. That many civilian employees of the Navy Department are required to be qualified in their various employment positions according to provisions of the Civil Service Act, the rules and regulations of the Civil Service Commission, and are in a classification which is generally known as the classified civil service of the United States. That the defendant is required under the laws of the United States to fill any and all positions in the Navy Department falling within the classified civil service from persons who have been found to be duly qualified for such positions by the United States Civil Service Commission.

2 4. The plaintiff alleges that on February 10, 1930, that he having previously qualified, entered the employment of the United States at the Philadelphia Naval

Shipyard, as a permanent civil service employee, and that he continued in this employment until he entered the military service of the United States on April 21, 1942, served continuously until the date of his honorable discharge on March 13, 1946.

5. The plaintiff further alleges that after his honorable discharge from the United States Army he immediately became a civilian employee of the Philadelphia Naval Shipyard under the jurisdiction of the said defendant, and that he has been ever since and now is employed at the said Naval Shipyard.

6. The plaintiff alleges that during all of the time that he was employed under the jurisdiction of the defendant as alleged in paragraph 5 hereof, he was a classified civil service employee and entitled to all of the rights, benefits, and privileges of the Civil Service Act, its various amendments, the provisions of Title 5, U.S.C.A., 648, and the provisions of the Veterans' Preference Act of June 27, 1944, which provisions of said Acts are binding on the part of the said defendant.

7. The plaintiff further alleges that on April 28, 1947, he was notified by the Industrial Relations Officer of the Philadelphia Naval Shipyard, acting under the authority of the said defendant, that effective June 29, 1947, he would be reduced in grade from the position of Electrical Engineer P-5, at a salary of \$6,384.00 per annum to Electrical Engineer P-4, at a salary of \$5,905.20 per annum, and that due consideration had been given to his efficiency, and it was deemed that one Charles F. Phillips, Electrical Engineer P-5, would be retained in the position in preference to the plaintiff.

8. The plaintiff alleges the fact to be that the said Charles F. Phillips, Electrical Engineer P-5, who was selected to fill the position held by the plaintiff prior to June 29, 1947, is not an honorably discharged soldier or sailor of the United States and is not an employee entitled to preference in the employment under any of the laws of the United

States, or under the Veterans' Preference Act of June 27, 1944.

3 9. The plaintiff further alleges the fact to be that effective as of June 29, 1947, he was illegally and unlawfully demoted from his position of Electrical Engineer P-5, to Electrical Engineer P-4, and that his salary was reduced thereby, and that the position which he held prior to June 29, 1947, was filled and now is being filled by the said Charles F. Phillips, Electrical Engineer P-5, in direct violation of the laws of the United States, and particularly the provisions of the Veterans' Preference Act of June 27, 1944, and the provisions of acts of Congress known and classified as Title 5 U.S.C.A. 648, which provides that no honorably discharged soldier or sailor whose efficiency rating is good or better shall be reduced in grade or salary and the plaintiff alleges that on June 29, 1947, and at all times herein mentioned the plaintiff's efficiency rating was good or better, and that the act of the said defendant and the officials acting under and by his direction are unlawful and in direct violation of the plaintiff rights to preferential employment, and that it is the duty of the said defendant to immediately and forthwith restore the plaintiff to the position of Electrical Engineer P-5, which position he held on June 29, 1947, under the laws of the United States.

10. The plaintiff further alleges that he has made due and proper demand upon the said defendant, his agents, and employees that he be restored to the grade and pay of Electrical Engineer P-5, which he held on June 29, 1947, but that the said defendant charged by law with the supervision and administration of employees of the Philadelphia Naval Shipyard has failed, refused or neglected to so restore the plaintiff to his rightful position, and now fail, refuse, and neglect to do so.

11. The plaintiff further alleges that because of the illegal and unlawful acts of the said defendant in demoting the plaintiff he has suffered a loss of wages, and will so continue to suffer unless this Court issues a preliminary mandatory injunction requiring the said defendant to restore

the plaintiff to the position of Electrical Engineer P-5, effective as of June 29, 1947. That the plaintiff has
 4 no speedy or adequate remedy at law, and that unless this Court compels the defendant to obey the laws of the United States in so far as the employment of the plaintiff is concerned, the plaintiff will be without remedy.

WHEREFORE, the plaintiff prays:

1. That due process issue directing and commanding the defendant to appear and answer this Bill of Complaint.

2. That the Court issue a preliminary mandatory injunction directing and requiring the said defendant to restore the plaintiff to the position of Electrical Engineer P-5, in the Philadelphia Naval Shipyard as of June 29, 1947, and that on a final hearing that such preliminary mandatory injunction be made final.

3. That the Court enter a judgment against the said defendant finding that the plaintiff is an honorably discharged soldier of the United States, and is entitled to all of the rights, benefits and privileges as such an employee under the Acts of Congress of the United States.

4. That the Court order and direct that the defendant pay to the plaintiff his salary based upon his status as an Electrical Engineer P-5 as of June 29, 1947, to the date of judgment.

5. That the plaintiff have such other, and further relief as to the Court may appear to be equitable and just in the premises.

6. That because of the arbitrary and capricious action of the defendant that the plaintiff have and recover his costs against the said defendant personally.

MERLE V. MILLER,
Plaintiff.

C. L. DAWSON, *Attorney for the Plaintiff,*
 917 - 15th Street, N.W.,
 Washington 5, D. C.

* * * * *

Filed Sep 5 1947

**Defendant's Motion for Summary Judgment Pursuant to
Rule 56 of the Federal Rules of Civil Procedure**

Now comes the defendant, and upon the complaint on file in this Court and upon the annexed affidavits, respectfully moves the Court for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there are no genuine issues as to any material facts and defendant is entitled to such judgment as a matter of law and for such other and further relief as to the Court may seem just and proper.

PEYTON FORD,
Assistant Attorney General.

GEORGE MORRIS FAY,
United States Attorney.

Of Counsel:

JOSEPH M. FRIEDMAN,
*Special Assistant to the
Attorney General.*

* * * * *

Filed Sep 5 1947

Affidavit

Charles R. Peck, being first duly sworn, deposes and says:

1. That he is employed by the Navy Department as Industrial Relations Assistant, Bureau of Ships; that the Philadelphia Naval Shipyard is under the cognizance of the Bureau of Ships; and that in his capacity as Industrial Relations Assistant the records of the Navy Department pertaining to civilian employees of the Bureau of Ships are under his jurisdiction and cognizance and that pursuant to his official duties he has examined and is familiar with the records of the Navy Department, Washington, D. C. pertaining to the reassignment to another position involving a change to lower grade of Merle V. Miller, plaintiff in the

above captioned action, from Electrical Engineer, P-5, to Electrical Engineer, P-4, U. S. Naval Shipyard Philadelphia, Pennsylvania, which became effective June 29, 1947, in accordance with Section 14 of the Veterans' Preference Act of 1944 (58 Stat. 390; 5 U.S.C. 863).

2. That the records of the Navy Department show that the plaintiff was employed at the U. S. Naval Shipyard, Philadelphia, Pennsylvania on February 10, 1930 as a Detail Draftsman (Aeronautical), he subsequently received various promotions, culminating in a promotion to Electrical Engineer, P-4, which he received November 1, 1940, he was on military furlough from April 22, 1942 to February 25, 1946, and on his return to duty on the latter date he was awarded, upon the basis of a reallocation effected during his absence, a grade of Electrical Engineer, P-5.

3. That the Plaintiff has established his right to be accorded Veterans' Preference by virtue of military service in World War I; is entitled to five points preference thereby; and has presented no evidence of any service-connected disability.

8 4. That in October 1946 the Bureau of Ships, having cognizance over Philadelphia Naval Shipyard, concluded a survey of Design Branch problems in all naval shipyards throughout the country and at Pearl Harbor; that the purpose of this survey was to establish uniform organizations and uniform personnel ratings, in addition to insuring a design force adequate to support the requirements of each shipyard, those of the Bureau of Ships and of the Bureau of Ordnance.

5. That as a result of the foregoing survey, the Bureau of Ships on November 13, 1946, addressed letters to all shipyard commanders, establishing "A", "B", and "C" design shipyards; that the subject of these letters was "Size and Organization of the Design Branch, Planning Department, U. S. Naval Shipyards"; that the "A" yards, which include Philadelphia, were so designated because they are the shipyards which are to maintain the largest of the De-

sign Branches; that the "A" yards were also designated as "lead" ordnance design yards, defined as those in which design work for the Bureau of Ordnance will be assigned; that "B" design shipyards were defined as those which are to maintain a medium size Design Branch, as distinct from the "A" design shipyards (largest Design Branch) and "C" design shipyards (smallest Design Branch); that naval officer personnel complements were fixed in these letters as well as the complements for specified types of civilian positions; and that the numbers of personnel and their rank or grade were evolved, as a result of the survey, from what was arrived at as a standard "A", "B", or "C" yard.

6. That the foregoing letters of November 13, 1946 instructed the shipyards, inter alia, to reassign civilian personnel in accordance with prescribed plans, pending subsequent official action respecting the allocation of the positions in the new organization and the actual paper processing of the reassignments, some of which would involve changes to lower grade; that the yards were requested in these letters (attached to which were proposed organization charts of "A", "B" or "C" Design Branch as applicable) for specific comments on situations where the shipyard desired to obtain exception from the prescribed standards; that the Bureau of Ships requested the assistance of the Head Engineers of the shipyards in preparing position descriptions for the civilian positions in the reorganized Design Branches; and that a committee comprised of the Head Engineers from the various shipyards met in Washington, D. C. in February 1947 to assist in the goal of achieving maximum position standardization and uniformity in the reorganized Design Branches of the Shipyards.

9 7. That the Bureau of Ships, in the interest of promoting the efficiency of the service, utilized to the utmost the service of all of the facilities to correct the unsatisfactory situation resulting from necessary staffing during the wartime period; that it was apparent prior to the reor-

ganization that the Design Branches at the various shipyards, as a result of reductions in force and normal personnel attrition, were top-heavy in the number of personnel occupying the higher grade positions; that the conditions surrounding the wartime organization no longer existed and were no longer applicable to peacetime conditions; that in view of this the Bureau of Ships proceeded to establish a new organization for the purpose of taking over the work of the old Design Branches; that as a consequence of the establishment of a new organization it became necessary to allocate new positions; that the Bureau of Ships directed the various shipyards, including the Philadelphia Naval Shipyard, to utilize the service of all personnel in the old organization in the new organization; that due to the limitations imposed by the Bureau of Ships as to the numbers and grades of new positions in the new organization some employees were "down-graded", that is, reassigned to positions of lower grade than they occupied in the old organization; and that the plaintiff was one of those "down-graded"; (from Electrical Engineer, P-5, to Electrical Engineer, P-4).

8. That, pursuant to the foregoing plan for a new organization, a non-veteran employee, namely Mr. Charles F. Phillips, was reduced from the grade of Electrical Engineer, P-6 and retained at the lower grade of Electrical Engineer, P-5; that in connection with the determination to retain the said Phillips at a level higher than that of the plaintiff, full consideration was given to the qualification of the employees involved and the personnel adjustment made would not have been effected if the plaintiff were as well, or better, qualified than the non-veteran; that the sole reason motivating this personnel adjustment was that the aforesaid non-veteran had qualifications superior to those of the plaintiff; that this personnel adjustment was based solely on "such cause as will promote the efficiency of the service" within the meaning of Section 14 of the Veterans' Preference Act of 1944; and that no reductions in force were

involved in the Design Branch reorganization, with the consequence that regulations pertaining to retention points and reductions in force were not applicable.

9. That the plaintiff's educational and experience record indicates that he attended Drexel Institute for four years, attended a six months' course in night school at the Engineering Club in the field of electronics, and received
10 sixty lessons from International Correspondence School in the field of Electrical Engineering; that prior to his duty at the Navy Yard, he served three months as an Electrical Mechanic and three years as an Electrical Draftsman; that he entered on duty February 10, 1930 as a Detail Draftsman (Aeronautical), and was re-rated as a Detail Draftsman (Electrical) on January 1, 1931; that he was first promoted to the rating of Assistant Engineer (Electrical) P-2, on June 1, 1935; and that the position to which the plaintiff lays claim is that of supervising the Power and Light Group in the Design Branch;

10. That the education and experience record of Mr. Charles F. Phillips indicate that he attended Drexel Institute for four years, pursuing a study of Electrical Engineering, and prior to entrance on duty at the shipyard, he served for three years as Electrical Draftsman at the Cramp Shipbuilding Company and two years as an Electrical Draftsman with the Pennsylvania Railroad; that he entered on duty at the Philadelphia Naval Shipyard on July 19, 1907 as an Electrical Draftsman; that during his forty year period of employment, all in the field of electrical designing, he has received numerous promotions, the highest of which was to the grade of Electrical Engineer, P-6, effected November 1, 1942; and that his experience and work record clearly indicate that he possesses qualifications superior to those of the plaintiff and should retain the P-5 position as Electrical Engineer, in preference to plaintiff, to promote the efficiency of the service.

11. That the plaintiff has been accorded full procedural rights and safeguards contemplated by the Veterans' Preference Act of 1944, specifically Section 14 thereof, in that,

by letter dated 28 April 1947, copy attached hereto and made a part hereof as exhibit (a), the plaintiff was, by direction of the Commander, Philadelphia Naval Shipyard, given in excess of thirty days' advance written notice of the proposed change in grade (effective June 29, 1947), which letter stated specifically and in detail the reasons for the proposed action and allowed the Plaintiff a reasonable time (five days) for answering the same personally and in writing.

CHARLES R. PECK.

Subscribed and sworn to, before me, a Notary Public in and for the District of Columbia this Second day of September 1947.

AGNES M. GALLAGHER,
Notary Public.

My commission expires August 31, 1948.

11

Filed Sep 5 1947

LS(Miller, M.V.)
(Code 170-e)

PHILADELPHIA NAVAL SHIPYARD
NAVAL BASE STATION
PHILADELPHIA 12, PA.

28 April 1947

To: Merle V. Miller, #941227

Via: Design Supt.

**Subj: Notice of Proposed Change to Lower Grade Because
of Reorganization.**

1. The Bureau of Ships has required the reorganization of the Design Branch, Planning Department, Philadelphia Naval Shipyard, in order to establish uniform organizations and uniform grade levels as between yards, in addition to insuring a design force, country-wide, adequate to discharge the Navy's over-all responsibilities and mission in regard to design work.

2. A review of all of the jobs in the P-5(Elec) level which are available in the reorganized Design Branch indicates

that you are qualified for the following position which will be filled by the employee shown :

P.D.#2-185 Charles F. Phillips Electrical Engr. P-5

3. We have placed this employee in this position because it has been determined that he has greatly superior qualifications than those you possess. Consequently, in order to promote the efficiency of the service and to complete the reorganization of the Design Branch in accordance with enclosure 1, it is proposed to effect a change to lower grade and salary, effective 29 June 1947 from Electrical Engineer, P-5, \$6384.00 to Electrical Engineer, P-4, \$5905.20. There may also be other positions in this level which you may feel you are qualified to fill. You may, if you wish review all the position descriptions in the P-5 level as well as the qualifications of all the employees who will occupy the positions which you may feel you are qualified to fill in addition to that described above. This information is available in the Industrial Relations Division.

4. The reorganization of the Design Branch, which makes your change to lower grade necessary, does not involve a reduction in force. Regulations governing reduction in force are, therefore, not applicable to personnel actions taken in connection with or because of this reorganization.

5. You may after consultation with your supervisor, take such leave as may be practicable before your change to lower grade becomes effective.

6. Inasmuch as you are entitled to Veterans Preference, you are hereby notified that you may submit reasons, orally and in writing, to the Industrial Relations Officer, Bldg. 698, IVb Unit, as to why this proposed action should not be taken. If you desire to submit reasons, they must be submitted within five days of receipt of this notice.

By direction of the Commander,

E. H. SCHANTZ,
Industrial Relations Officer.

Encl. 1

BuShips ltr, NY3/A3-1(740)

EN28/A-2-11, 12 Mar. 1947.

Personally appeared before me, a Notary Public in and for the county of Philadelphia, State of Pennsylvania, Frank A. Robey, Jr., who states that the above is a true and accurate copy of the Notice of Proposed Change to Lower Grade because of Reorganization as it appears in the official personnel record of Merle V. Miller.

FRANK A. ROBEY, JR.,
Personnel Assistant,
Philadelphia Naval Shipyard.

Subscribed and sworn to before me this 3rd day of September 1947.

CHARLES D. SANTO,
Notary Public.

My commission expires January 2, 1949.

12 Filed Sep 5 1947

COMMONWEALTH OF PENNSYLVANIA, COUNTY OF PHILADELPHIA, ss:

I, **William A. Brady**, Acting Regional Director, Third U. S. Civil Service Region, Room 305, Custom House Building, 2nd & Chestnut Streets, Philadelphia, Pa., being first duly sworn, do depose and state:

That records of this office disclose that Mr. Merle V. Miller, 7414 Elizabeth Road, Melrose Park, Pa., filed appeal on June 7, 1947, under Section 14 of the Veterans' Preference Act of 1944, from the action of the Philadelphia Naval Shipyard, Philadelphia, Pa., in proposing his reduction in grade effective June 29, 1947, from the position of Electrical Engineer, P-5, \$6384 per annum, to that of Electrical Engineer, P-4, \$5905.20 per annum.

Investigation by this office established that the proposed change to lower grade was occasioned by the reorganization

of the Design Branch, Planning Department, "in order to establish uniform organizations and uniform grade levels as between yards, in addition to insuring a design force, country-wide, adequate to discharge the Navy's over-all responsibilities and mission in regard to design work." It did not involve a reduction in force and the Shipyard therefore contended that the selection of employees for demotion was not subject to the Retention Preference Regulations. Under the reorganization, the Design Branch, Electrical and Electronics Section, was divided into three groups: Power and Light Group; Interior Communication and Fire Control Group; and the Electronics Group, each headed by a P-5 Engineer. Mr. Charles S. Phillips, formerly a P-6 Engineer, was downgraded and placed in charge of the first main group; Mr. Hughey Purcell was selected to head the second; and Mr. E. J. Burke, an Electronics Engineer, was retained as supervisor of the third. Appellant, because of some previous training in Electronics, was assigned to the latter group under Mr. Burke. Mr. Miller was considered by the agency for all three positions in the P-5 (Electrical) level and had been found qualified for one such position, that assigned to Mr. Phillips. He was advised by the Department that Mr. Phillips had been selected in preference to him because it had been determined "that he has greatly superior qualifications" and his selection was therefore deemed to promote the efficiency of the service. In analyzing the respective qualifications of the individuals concerned, consideration had been given to the factors of comparative education, experience and efficiency ratings.

In his letter of appeal and in several affidavits filed with this office, Mr. Miller based his appeal primarily on the charge that the change to a lower grade was a "violation of existing veterans preference legislation, namely, 37 Stat. 413 of August 23, 1912; Sections 14 and 18 Public Law 359 of June 27, 1944 (Veterans' Preference Act); and Executive Order of June 4, 1925." He supported this statement by pointing out that the number of employees in his section

has been reduced to a total of 36 from a wartime peak of 180 and that the "so-called reorganization under which my demotion is being effected is a direct outcome of the recent reduction in force and, therefore, existing legislation governing that situation will also apply in this case." In these documents Mr. Miller agreed with the agency officials that "the last reduction in force action in the Design Branch was last January", but maintained that previous reductions in force "brought about the reorganization of this portion of the Design Branch."

As for relative qualifications, Mr. Miller stated: "In view of Mr. Phillips' long years of service . . . and the positions he has held . . . they could substantiate their claim that he has superior qualifications for the P-5 position he is now filling." He also admitted that Messrs. Purcell and Burke "have better qualifications and can do a better job in their positions than I can", adding "There are no other P-5 positions that I feel equally qualified with the incumbent." In this connection, he maintained that his retention in grade should not be based on comparative abilities but rather on his interpretation of existing veterans preference legislation as outlined above.

The Third Regional Office has, on this date (August 27, 1947) mailed to Mr. Miller a copy of an analytical memorandum summarizing the evidence in the case and informing Mr. Miller of its decision sustaining the agency's action in effecting his change to lower grade. The memorandum pointed out that the regulations cited by appellant, when considered with the supplemental statements furnished by him to representatives of this office, indicated clearly that he felt that a reduction in force was the underlying cause of the reorganization and that retention preference credits should, accordingly, have been used in selecting the employees to be retained in the various grades. The memorandum continued by quoting the Commission's definition of a "reduction in force" and by repeating pertinent portions of the Commission's decision in the cases of certain

veterans who were demoted from supervisory positions in the Boston and Philadelphia Naval Shipyards. The following comment was then made:

"It is clear from the foregoing that the Commission contemplates that reductions in force, as such, involve actual decrease in the number of personnel on active duty, and that demotions occurring long after the completion of a reduction-in-force program represent the inevitable adjustment of the supervisory force and are not subject to the Retention Preference Regulations. In the instant case, therefore, the provisions of Part 20 (Retention Preference Regulations For Use In Reductions In Force) are not applicable and the selection of employees for demotion is a matter of administrative discretion, subject only to the provisions of Section 14 of the Veterans' Preference Act of 1944 that such demotions as involve preference employees must be for such cause as will promote the efficiency of the service. Mr. Miller has indicated that he does not question the superior qualifications of the three individuals selected to occupy the

14 P-5 Electrical Engineer positions under the reorganization. Under the circumstances, this office can only conclude that their selection, and the accompanying reduction of appellant to a lower grade, was not a violation of the foregoing provision of Section 14 of the Act."

In conclusion, the memorandum reflected the formal finding of this office that the system used by the agency in selecting employees for change to lower grade, in connection with the reorganization of the Design Branch, was not in violation of existing laws and regulations, and the further finding that the evidence in the case upheld the agency's contention that the demotion of Mr. Miller, after consideration of relative qualifications of all employees involved, was for such cause as would promote the efficiency of the service. Mr. Miller was advised of his privilege to appeal the decision further to the Commissioners, U. S. Civil Service Commission, Washington 25, D. C., within thirty (30) days of its receipt.

I have read the foregoing statement, consisting of these three pages, each of which I have initialed or signed. I fully understand such statement and same is true and complete to the best of my knowledge and belief, and is made of my own free will without any threat, promise, or inducement.

(signed) WILLIAM A. BRADY,
Acting Regional Director.

Subscribed and sworn to before me at Philadelphia, Pa. this 27th day of August, 1947.

CHARLES S. FRANCIS,
Notary Public.

My Commission Expires Jan. 24, 1949.

* * * * *

147

Filed Oct 30 1947

Affidavit

STATE OF PENNSYLVANIA, COUNTY OF PHILADELPHIA, ss:

Merle V. Miller, being first duly sworn on his oath deposes and says that he is the plaintiff in the above entitled cause, and that he makes this affidavit in opposition to the motion for a summary judgment filed on behalf of the defendant; That among the issues of fact arising in this cause is whether the plaintiff's demotion is due to a reduction in force and personnel in the Philadelphia Naval Shipyard, and that this issue cannot be decided upon affidavits but only from a trial of the said issue and where the defendant's witnesses would be subject to cross examination, and affiant says that he expects to prove at any such trial that the so-called reorganization plan is merely a plan to circumvent the provisions of the Veterans Preference Acts giving preference in employment in their grade and salary to honorably discharged soldiers and sailors of the United States, and affiant further says that the personnel in the Philadelphia Naval Shipyard has since the year 1945, been reduced in force or personnel from 45,000 employees to approxi-

mately 9,200 employees including the design branch of the said Naval Shipyard, and that the plaintiff's demotion is directly due to the reduction in personnel and reduction in force, and that the testimony in this regard should be taken by the Court and the issue fully and fairly tried before the Court. The affiant further says that the affidavits filed by the defendant contain no facts as to the reduction in
148 force of personnel but only conclusions of the affiants.

That there are genuine issues of facts to be determined by the Court in this cause.

MERLE V. MILLER.

Subscribed and sworn to before me this 29 day of October, A. D. 1947.

KATHRYN M. HIPPLE,
*Notary Public in and for the
County of Philadelphia,
State of Pennsylvania.*

My commission expires: 1-9-51.

* * * * *

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Affidavit in Support of Defendant's Motion for Summary Judgment

Lawson A. Moyer, being duly sworn deposes and says:

I am the Executive Director and Chief Examiner of the United States Civil Service Commission. This affidavit is submitted in support of a Motion for Summary Judgment made by the defendant in the above-entitled action.

The official records of the Civil Service Commission show that on October 5, 1947, Merle V. Miller appealed to the United States Civil Service Commission from the decision of the Director of the Third United States Civil Service Region affirming the action of the Philadelphia Naval Shipyard which reduced him in grade from Electrical Engineer, P-5, \$6384 per annum to Electrical Engineer, P-4, \$5905.20 per annum, effective June 29, 1947.

Mr. Miller's appeal was considered by the Board of Appeals and Review of the United States Civil Service Commission which affirmed the decision of the Director of the Third United States Civil Service Region. Mr. Miller was notified of the disposition of his appeal in a letter dated January 9, 1948, a copy of which is annexed hereto and made a part hereof.

LAWSON A. MOYER.

Subscribed and sworn to before me, a Notary Public, in and for the District of Columbia, this 12 day of March, 1948.

R. E. SAUEDER,
Notary Public.

(SEAL)

My Commission expires Jan 1 - 1951.

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Letter

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON 25, D. C.

File BAR: BRS

January 9, 1948

Mr. Merle V. Miller
7414 Elizabeth Road
Melrose Park
Pennsylvania

Dear Mr. Miller:

Reference is made to your appeal under Section 14 of the Veterans' Preference Act from the decision of the Acting Director, Third Civil Service Region sustaining the action of the Philadelphia Naval Shipyard in reducing you in grade from the position of Electrical Engineer, P-5, to Electrical Engineer, P-4, effective June 29, 1947, because of reorganization of the Design Branch.

The Board of Appeals and Review of the Commission has considered all the facts in your case, including the statements in your letter of October 5, 1947. However, for the

reasons set forth in the Acting Regional Director's report of findings and recommendation, a copy of which was furnished you under date of August 27, 1947, this office has affirmed his decision.

Very respectfully,

JOHN F. EDWARDS, *Chairman*
Board of Appeals and Review

cc: Philadelphia Naval Shipyard
cc: Third Region
cc: Veterans Service Section
cc: Service Record Division
cc: Retirement Division

* * * * *

151

Filed Apr 30 1948

Order

Upon consideration of the motion of defendant for summary judgment, the affidavits and points and authorities in support thereof, all heretofore filed herein, upon argument of counsel in open court and upon all the proceedings herein, and the Court being fully advised in the premises, it is, by the Court this 30th day April 1948,

ORDERED, ADJUDGED and DECREED that, the motion of defendant for summary judgment be, and the same hereby is, granted.

By the Court:

F. DICKINSON LETTS
Justice.

Approved as to Form:

C. L. DAWSON

Attorney for Plaintiff

JOSEPH M. FRIEDMAN

Special Assistant to the Attorney General

Attorney for Defendant

* * * * *

Filed Jul 7 1947

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

ROSCOE G. WHIPPLE, 3280 48th Street, Merchantville, New
Jersey, *Plaintiff*,

v.

JAMES FORRESTAL, Secretary of the Navy, Washington,
D. C., *Defendant*.

Civil Action No. 2757-47

**Suit for a Preliminary and Permanent Mandatory
Injunction and for Other Equitable Relief**

The plaintiff for his cause of action complains of the defendant and alleges:

1. That the plaintiff is a citizen of the United States, and a resident of the State of New Jersey, and resides at 3280 48th Street in Merchantville, New Jersey.

2. That the defendant, James Forrestal, is the duly appointed, acting and qualified Secretary of the Navy of the United States, and in such capacity is charged by law with the administration of all laws enacted by Congress of the United States relating to the Navy Department of the United States, and is specifically charged by law with the employment of civilian personnel under the jurisdiction of the Navy Department, and that the Philadelphia Naval Shipyard is one of the many Yards and bases under the direct control and supervision of the said defendant.

3. That many civilian employees of the Navy Department are required to be qualified in their various employments according to the Civil Service Act of the United States, and the rules and regulations of the Civil Service Commission, and other laws of the United States, and that such employees are in a classification which is generally and usually known as the classified civil service. That the said defendant is required under the laws of the United States to fill

any and all positions falling within the classified civil service from lists of persons who have been found to be
158 qualified for such positions by the Civil Service Commission of the United States.

4. That the plaintiff enlisted in the military service of the United States on September 26, 1918, and was honorably discharged therefrom on March 8, 1920.

5. That the plaintiff, having been previously qualified by the Civil Service Commission of the United States, entered the employment of the United States in the Philadelphia Naval Shipyard on July 1, 1918, and thereafter, with the exception of the time spent in military service, continued in such employment until the present time.

6. That on May 12, 1947, the plaintiff being graded as a Mechanical Engineer, P-3, was advised by the Industrial Relations Officer of the Philadelphia Naval Shipyard, under the jurisdiction of the said defendant, that it was proposed to change his grade from Mechanical Engineer, P-3, to Ordnance Engineer, P-2, and that his salary would be reduced from four thousand six hundred fifty one dollars and twenty cents (\$4,651.20), per annum, to four thousand one hundred forty nine dollars and sixty cents (\$4,149.60), per annum, effective June 29, 1947, and that the plaintiff was advised that there were retained in Ordnance P-3 grade, two persons, namely, Robert S. Kirland, and Albert C. Sterling.

7. The plaintiff further alleges the fact to be that pursuant to the notice of demotion in grade, the plaintiff was reduced in his grade and rating from Mechanical Engineer, P-3, as of June 29, 1947, and there was retained in the same grade, and at the present time in this status in the Philadelphia Naval Shipyard, the said Robert S. Kirland and Albert C. Sterling.

8. The plaintiff further alleges that he is an honorably discharged soldier of the United States and entitled to all of the rights, benefits, and privileges accorded to such persons, as contained in the Veterans Preference Act of June 27, 1944, and the provisions of the Act of Congress of Au-

gust 23, 1912, and February 28, 1916, (5 U.S.C.A. 648), providing, among other things, that, in the event of reductions being made in any of the executive departments, no honorably discharged soldier or sailor, whose record is rated good in said department, shall be discharged or dropped, or reduced, in rank or salary.

159 9. The plaintiff further alleges that on May 12, 1947, when the plaintiff was notified of his reduction in grade, and on June 29, 1947, when he was in fact reduced, and at the present time the plaintiff's efficiency rating was "very good", which is good or better as provided by the terms of the statutes giving him preference in his employment, and by reason thereof he was and is entitled to a preference under the laws of the United States as alleged in Paragraph 8 hereof.

10. The plaintiff further alleges that the said Robert S. Kirland, and Albert C. Sterling, as retained in the said grade under the notice to the plaintiff are not honorably discharged soldier or sailors of the United States, nor do they, or each of them, have any rights to preference in the matter of their employment by the said defendant, and the plaintiff alleges that the retaining of the said Robert S. Kirland, and Albert C. Sterling in Grade P-3, and the demotion of the plaintiff, is illegal and unlawful, and in direct violation of the statutes of the United States, the rules and regulations of the Civil Service Commission, and the Executive Orders of the President of the United States in applicable situations.

11. That unless this Court issues a preliminary mandatory injunction requiring the said defendant to restore the plaintiff to the position he held on June 29, 1947, the plaintiff will suffer irreparable damages, and that he has no speedy adequate remedy at law.

WHEREFORE, plaintiff prays:

1. That due process issue directing and commanding the said defendant to appear and answer this Bill of Complaint.

2. That a preliminary mandatory injunction issue di-

rected to the defendant requiring him to restore the plaintiff to the position in the Philadelphia Naval Shipyard which he held on June 29, 1947, forthwith.

3. That a Final Mandatory injunction issue restoring plaintiff to duty on June 29, 1947, and proper order of this

160 Court issue showing that the demotion of plaintiff was unlawful and restoring the plaintiff to duty in accordance with all of the rights, benefits, and privileges, that he enjoyed on June 29, 1947, and that the Court order the payment of salary based upon the grade which the plaintiff held as of June 29, 1947, to the date of judgment.

4. For such other and further relief as to the Court appear to be equitable and just.

ROScoe G. WHIPPLE,
Plaintiff.

C. L. DAWSON,
Attorney for the Plaintiff,
917 15th Street, Northwest,
Washington 5, D. C.

• • • • • • • • •

161

Filed Sep 5 1947

**Defendant's Motion for Summary Judgment Pursuant to
Rule 56 of the Federal Rules of Civil Procedure**

Now comes the defendant, and upon the complaint on file in this Court and upon the annexed affidavits, respectfully moves the Court for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there are no genuine issues as to any material facts and defendant is entitled to such judgment as a matter of law and for such other and further relief as to the Court may seem just and proper.

PEYTON FORD,
Assistant Attorney General.

GEORGE MORRIS FAY,
United States Attorney.

Of Counsel:

JOSEPH M. FRIEDMAN,
Special Assistant to the Attorney General.

* * * * *

162

Filed Sep 5 1947

Affidavit

Charles R. Peck, being first duly sworn, deposes and says:

1. That he is employed by the Navy Department as Industrial Relations Assistant, Bureau of Ships; that the Philadelphia Naval Shipyard is under the cognizance of the Bureau of Ships; and that in his capacity as Industrial Relations Assistant the records of the Navy Department pertaining to civilian employees of the Bureau of Ships are under his jurisdiction and cognizance and that pursuant to his official duties he has examined and is familiar with the records of the Navy, Washington, D. C. pertaining to the reassignment to another position involving a change to lower grade of Roscoe G. Whipple, plaintiff in the above

captioned action, from Associate Mechanical Engineer, P-3, to Ordnance Engineer, P-2, U. S. Naval Shipyard, Philadelphia, Pennsylvania, which became effective June 29, 1947, in accordance with Section 14 of the Veterans' Preference Act of 1944 (58 Stat. 390; 5 U.S.C. 863).

2. That the records of the Navy Department show that the plaintiff was employed at the U. S. Naval Shipyard, Philadelphia, Pennsylvania, on July 1, 1918, as a Special Helper; he resigned October 23, 1918 to enter the military service; was reinstated May 13, 1920; he has remained in continuous service thereafter and was advanced by subsequent promotions to the position of Associate Mechanical Engineer, P-3, which he received on March 1, 1941.

163 3. That the plaintiff has established his right to be accorded veterans' preference by virtue of military service in World War I; is entitled to five points preference thereby; and has presented no evidence of any service-connected disability.

4. That in October 1946, the Bureau of Ships, having cognizance over Philadelphia Naval Shipyard, concluded a survey of Design Branch Problems in all naval shipyards throughout the country and at Pearl Harbor; that the purpose of this survey was to establish uniform organizations and uniform personnel ratings, in addition to insuring a design force adequate to support the requirements of each shipyard, those of the Bureau of Ships and of the Bureau of Ordnance.

5. That as a result of the foregoing survey, the Bureau of Ships on November 13, 1946, addressed letters to all shipyard commanders, establishing "A", "B", and "C" design shipyards; that the subject of these letters was "Size and Organization of the Design Branch, Planning Department, U. S. Naval Shipyards"; that the "A" yards, which include Philadelphia, were so designated because they are the shipyards which are to maintain the largest of the Design Branches; that the "A" yards were also designated as "lead" ordnance design yards, defined as those in which

design work for the Bureau of Ordnance will be assigned; that "B" design shipyards were defined as those which are to maintain a medium size Design Branch, as distinct from the "A" design shipyards (largest Design Branch) and "C" design shipyards (smallest Design Branch); that naval officer personnel complements were fixed in these letters as well as the complements for specified types of civilian positions; and that the numbers of personnel and their rank or grade were evolved, as a result of the survey, from what was arrived at as a standard "A", "B" or "C" yard.

6. That the foregoing letters of November 13, 1946, instructed the shipyards, inter alia, to reassign civilian personnel in accordance with prescribed plans, pending subsequent official action respecting the allocation of the positions in the new organization and the actual paper
 164 processing of the reassignments, some of which would involve changes to lower grade; that the yards were requested in these letters (attached to which were proposed organization charts of "A", "B" or "C" Design Branch as applicable) for specific comments on situations where the shipyard desired to obtain exception from the prescribed standards; that the Bureau of Ships requested the assistance of the Head Engineers of the shipyards in preparing position descriptions for the civilian positions in the reorganized Design Branches; and that a committee comprised of the Head Engineers from the various shipyards met in Washington, D. C., in February 1947 to assist in the goal of achieving maximum position standardization and uniformity in the reorganized Design Branches of the shipyards.

7. That the Bureau of Ships, in the interest of promoting the efficiency of the service, utilized to the utmost the service of all of the facilities to correct the unsatisfactory situation resulting from necessary staffing during the wartime period; that it was apparent prior to the reorganization that the Design Branches at the various shipyards, as a

result of reductions in force and normal personnel attrition, were top-heavy in the number of personnel occupying the higher grade positions; that the conditions surrounding the wartime organization no longer existed and were no longer applicable to peacetime conditions; that in view of this the Bureau of Ships proceeded to establish a new organization for the purpose of taking over the work of the old Design Branches; that as a consequence of the establishment of a new organization it became necessary to allocate new positions; that the Bureau of Ships directed the various shipyards, including the Philadelphia Naval Shipyard, to utilize the service of all personnel in the old organization in the new organization; that due to the limitations imposed by the Bureau of Ships as to the numbers and grades of new positions in the new organization some employees were "down-graded", that is, reassigned to positions of lower grade than they occupied in the old organization; and that the plaintiff was one of those "down-graded". (from Associate Mechanical Engineer, P-3, to Ordnance Engineer, P-2).

165 8. That, pursuant to the foregoing plan for a new organization, a non-veteran employee, namely Mr. A. C. Sterling, was reduced from a higher level and retained at the lower grade of ordnance engineer, P-3, and Mr. R. S. Kirland, also a non-veteran employee, was reassigned and retained at the same level, as Ordnance Engineer, P-3; that in connection with the determination to retain the said Sterling and Kirland at a level higher than that of the plaintiff, full consideration was given to the qualifications of the employees involved and the personnel adjustment made would not have been effected if the plaintiff were as well, or better, qualified than the non-veterans; that the sole reason motivating this personnel adjustment was that the afore-said non-veterans had qualifications superior to those of the plaintiff; that this personnel adjustment was based solely on "such cause as will promote the efficiency of the service" within the meaning of Section 14 of the Veterans' Prefer-

ence Act of 1944; and that no reductions in force were involved in the Design Branch reorganization, with the consequence that regulations pertaining to retention points and reductions in force were not applicable.

9. That the plaintiff's education and experience record prior to entrance on duty at the Philadelphia Naval Shipyard indicates that he completed elementary school plus two and one-half years of high school; that during the period from April 1915 to April 1918 he pursued a course of study relating to Agriculture at the Williamsen School of Mechanical Trades, Delaware County, Penna.; that during the period from September 1920 to March 1923, he pursued courses in advanced mechanical drawing at the Drexel Institute of Technology; that during the period from March 1922 to March 1923, he received instruction in structural engineering at the Drexel Institute of Technology; that plaintiff was transferred to the Design Branch of the Philadelphia Naval Shipyard on September 12, 1925 in the mechanical section; that his work experience has constituted of making up job orders and routing ordnance alterations, not involving design work, which work is quasi-clerical in na-

166 ture and requires merely some degree of technical ability and knowledge in order that understanding could be had between the plaintiff and the other employees with whom it was necessary for him to deal; that in 1937 plaintiff was assigned the task of completing one plan involving design duties, which task was very poorly accomplished, and he has never again been assigned design work; and that the duties required of a P-3 Ordnance Engineer as a result of the reorganization of the Design Branch are preparation of design layouts for preliminary design studies, preparation of necessary engineering compilations, and assistance rendered supervisors in technical supervision of the work of lower grade employees.

10. That the education and experience record of Mr. R. S. Kirland indicates that he attended elementary school from April 1904 to June 1912 and high school during 1912 and

1913; that during the period from August 1913 to May 1917 he attended the Drexel Institute of Technology pursuing an evening course in engineering; that his work experience prior to entrance on duty at the shipyard was composed of nine years and four months of general drafting experience and eight years and five months as a ship draftsman preparing engine and boiler room layouts and piping and mechanical detailing; that Kirland has actually been assigned to drafting and designing duties since his entrance on duty at the Philadelphia Naval Shipyard on February 19, 1941; that he was promoted to the rating of Mechanical Engineer, P-3, on September 1, 1944 and reassigned to the rating of Ordnance Engineer, P-3, on March 24, 1946, which rating has been retained by him under the reorganization of the Design Branch; and that his experience prior to his entrance on duty and his work record during his period of employment with the Philadelphia Naval Shipyard clearly indicate that he possesses qualifications superior to those of the plaintiff and should retain the P-3 position as Ordnance Engineer, in preference to the plaintiff, to promote the efficiency of the service.

11. That the education and experience record of Mr. A. C. Sterling indicates that he pursued a course of study
167 in electrical and mechanical engineering at the Drexel Institute of Technology and has actually been engaged as a mechanical draftsman at a period of Five years prior to his entrance on duty at the shipyard on April 4, 1935, that he has been assigned duties as an engineer draftsman and other allied design work, has received various promotions since his entrance on duty, including a promotion to Associate Mechanical Engineer, P-3, on January 1, 1942, and a promotion to Ordnance Engineer, P-4, on November 16, 1942; that pursuant to the aforementioned reorganization plan, Sterling was, effective June 29, 1947, reassigned and changed to the lower grade of Ordnance Engineer, P-3; and that Sterling clearly possesses qualifications superior to those of the plaintiff and that his as-

signment as Ordnance Engineer, P-3, in preference to the plaintiff, promotes the efficiency of the service.

12. That the plaintiff has been accorded full procedural rights and safeguards contemplated by the Veterans' Preference Act of 1944, specifically Section 14 thereof, in that, by letter dated April 28, 1947, copy attached hereto and made a part hereof as exhibit (a), the plaintiff was, by direction of the Commander, Philadelphia Naval Shipyard, given in excess of thirty days' advance written notice of the proposed change in grade (effective June 29, 1947), which letter stated specifically and in detail the reasons for the proposed action and allowed the plaintiff a reasonable time (five days) for answering the same personally and in writing.

CHARLES R. PECK

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 3rd day of September, 1947.

AGNES M. GALLAGHER
Notary Public

My Commission expires August 31, 1948.

168 Refer to File
LS(Whipple, R. G.)
(Code 170e)

PHILADELPHIA NAVAL SHIPYARD
NAVAL BASE STATION
PHILADELPHIA 12, PA.

28 April 1947

To: Roscoe G. Whipple
Via: Design Supt.

Subject: Notice of Proposed Change to Lower Grade Because of Reorganization.

1. The Bureau of Ships has required the reorganization of the Design Branch, Planning Department, Philadelphia Naval Shipyard, in order to establish uniform organizations

and uniform grade levels as between yards, in addition to insuring a design force, country-wide, adequate to discharge the Navy's over-all responsibilities and mission in regard to design work.

2. A review of all of the jobs in the P-3 (Ordnance Engr) level which are available in the reorganized Design Branch indicates that you are qualified for the following positions which will be filled by the employees shown:

11-602	Ordnance Engr, P-3	Robert S. Kirland
11-602-2	Ordnance Engr, P-3	Albert C. Sterling

We have placed these employees in these positions because it has been determined that they have greatly superior qualifications than those you possess. Consequently, in order to promote the efficiency of the service and to complete the reorganization of the Design Branch, in accordance with enclosure 1, it is proposed to effect a change to lower grade and salary, effective 29 June 1947, from Mechanical Engineer, P-3, \$4651.20 to Ordnance Engineer, P-2, \$4149.60 per annum. There may also be other positions in this level which you may feel you are qualified to fill. You may, if you wish, review all the position descriptions in the P-3 level as well as the qualifications of all the employees who will occupy the positions which you may feel you are qualified to fill in addition to those described above. This information is available in the Industrial Relations Division.

3. The reorganization of the Design Branch, which makes your change to lower grade necessary, does not involve a reduction in force. Regulations governing reduction in force, therefore, are not applicable to personnel actions taken in connection with or because of this reorganization.

4. You may, after consultation with your supervisor, take such leave as may be practicable before your change to lower grade becomes effective.

5. Inasmuch as you are entitled to Veteran Preference, you are hereby notified that you may submit reasons, orally and in writing, to the Industrial Relations Officer, Bldg. 698, IVb Unit, as to why this proposed action should not be taken. If you desire to submit reasons, they must be submitted within five days of receipt of this notice.

By direction of the Commander,

E. H. SCHANTZ

Industrial Relations Officer

Encl. 1

BuShips ltr NY3/A3-1(740)

EN28/A2-11, 12 Mar. 1947

Personally appeared before me, a Notary Public in and for the county of Philadelphia, State of Pennsylvania, Frank A. Robey, Jr., who states that the above is a true and accurate copy of the Notice of Proposed Change to Lower Grade because of Reorganization as it appears in the official personnel record of Roscoe G. Whipple.

FRANK A. ROBEY, JR.,

Personnel Assistant,

Philadelphia Naval Shipyard.

Subscribed and sworn to before me this 3rd day of September 1947.

CHARLES DiSANTO,

Notary Public.

My commission expires January 2, 1949.

169 Commonwealth of Pennsylvania, County of Philadelphia, ss:

I, **William A. Brady**, Acting Regional Director, Third U. S. Civil Service Region, Room 305, Custom House Building, 2nd & Chestnut Streets, Philadelphia 6, Pa., being first duly sworn, do depose and state:

That the records of the Third U. S. Civil Service Region disclosed that under date of June 6, 1947, Mr. Roscoe G.

Whipple, residing at 3280—48th Street, Merchantville, New Jersey (Born April 30, 1898), filed an appeal with the Third Regional Office under Section 14 of the Veterans' Preference Act of 1944 from the action of the Philadelphia Naval Shipyard, Naval Base Station, Philadelphia, 12, Pa., in changing his position to a lower grade, effective June 29, 1947, from Mechanical Engineer, P-3, \$4651.20 per annum, to Ordnance Engineer, P-2, \$4149.60 per annum, because of a reorganization of the Design Branch, Planning Department, Philadelphia Naval Shipyard. Mr. Whipple presented to this office satisfactory evidence of active service with the United States Marine Corps from October 26, 1918 to March 8, 1920, and of honorable discharge therefrom. Personnel records of the agency indicate he first received a probational appointment in the position of Machinist at the Philadelphia Naval Shipyard on July 1, 1918; and that he has had continuous employment since that time. These facts establish Mr. Whipple's entitlement to file an appeal under Section 14 of the Veterans' Preference Act.

That, this office conducted an investigation of the above appeal at Philadelphia, Pa., from June 13 to August 21, 1947. It was established that an advance written notice dated April 28, 1947, was submitted to the appellant by the agency, in which he was advised that it was proposed to effect a change in lower grade and salary effective as of June 29, 1947, in his case from Mechanical Engineer, P-3, to Ordnance Engineer, P-2. In this same notice the appellant was informed that the Bureau of Ships, Navy Department, Washington, D. C., had required the reorganization of the Design Branch, Planning Department, in which he was employed, "in order to establish uniform organization and uniform grade levels as between shipyards and to insure a Design Branch, country-wide, adequate to discharge the Navy's over-all responsibilities and mission in regard to design work." Mr. Whipple, in this notification of proposed action, was further informed that he was found qualified for any one of two P-3 Ordnance Engineer posi-

tions; but that two other employees had been placed in these positions because it had been determined that they possessed superior qualifications than the appellant possessed. As a consequence, the appellant was advised that in order to promote the efficiency of the service and to complete the reorganization of the Design Branch in accordance with Navy Department instructions, it would be necessary to demote him as indicated above. It was further stated in the same notice that the reorganization of the Design Branch, which made the appellant's demotion necessary, did not involve a reduction in force, and that therefore the Retention Preference Regulations promulgated under the authority of Section 12 of the Veterans' Preference Act were not applicable to his particular case.

170 That, Mr. Whipple, in submitting his appeal to this office on June 6, 1947, stated in a written communication that "the Veteran's Preference Act; Public Law #299 Chapter 350 Sec. 4 August 23, 1912 (37 Stat; 413) Sec. 28 and Executive Order of June 4th, 1925 Sec. 30 and Public Law #359 Sec. 14 and 18 have been violated." Mr. Whipple further stated that he had held his P-3 grade since February of 1941 with an efficiency mark of "Good" or better ("Very Good" for the past two years), and that it was his contention that the efficiency of the reorganization would not be impaired in any way by his retention of his present grade. In an affidavit executed by him on June 13, 1947, Mr. Whipple stated that "I feel that I have superior qualifications for the position to be filled by Mr. Kirland and should be assigned to that position." He is referring to Mr. Robert S. Kirland, one of the employees assigned to the P-3 Ordnance Engineer position referred to in the advance written notice of April 28, 1947.

That, during the course of the investigation, an affidavit was secured from the Industrial Relations Officer, Philadelphia Naval Shipyard, under date of June 30, 1947. In this affidavit the official referred to the reorganization of the Design Branch and stated that such reorganization did

not involve a reduction in force, and that any reductions in grade made in the cases of employees were made in order to better promote the efficiency of the service. He likewise stated that the action in changing Mr. Whipple's position to a lower grade was a part of this reorganization of the Design Branch. According to the Industrial Relations Officer, all new positions were set up and then personnel were re-assigned into these new positions. He likewise stated that all the jobs in the P-3 (Mechanical and Ordnance Engineer) level which were available in the reorganized Design Branch were reviewed by the Ship Design Director and that this latter official made the determination as to which employees were the best qualified and which ones should be placed in the respective positions. He stated that education, past experience, and efficiency ratings were the factors used in determining which of the employees had the best qualifications and which should be placed in certain positions to promote the efficiency of the service. He stated further that this action of reassigning employees to the new positions was not a reclassification action but was a regular part of the reorganization. No survey, according to the Industrial Relations Officer, was made of the old positions. He stated further that the position descriptions for the new positions were issued by the Bureau of Ships after being allocated by the Classification Branch of the Office of Industrial Relations, Navy Department, Washington, D. C. Likewise, he stated that these position descriptions would be used until a survey could be made by the Local Area Wage and Classification Office. Finally, the Industrial Relations Officer maintained that no reduction in force was involved in the reorganization of the Design Branch because the number of personnel was not reduced and because no employee had been separated from the rolls and none had been put on furlough in excess of thirty days. He stated that the last time any employee was either separated or furloughed in the Design Branch was on January 16, 1947.

171 That, under date of June 30, 1947, Mr. A. M. Stefano, Ship Design Director, Planning Depart-

ment, Philadelphia Naval Shipyard, executed an affidavit in which he furnishes details respecting the appellant's demotion, the reasons therefor, and the qualifications of the appellant as compared to the two employees who were retained in the Ordnance Engineer, P-3, positions. He stated that there were two Ordnance Engineer, P-3, positions in the Ordnance Group of the Marine and Mechanical Section of the Design Branch for which the appellant was qualified. It was decided, according to Mr. Stefano, that Messrs. Robert S. Kirland and Albert C. Sterling had greatly superior qualifications for the position and that they were given the positions instead of Mr. Whipple.

That, under date of August 21, 1947, the appellant executed another affidavit in which he stated that the P-3 job now occupied by Mr. Kirland and the P-2 job that he was now filling were more or less the same job and that both should be allocated in grade P-3. He likewise reiterated his contention that he was better qualified for the position held by Mr. Kirland than the latter was.

That, in view of the appellant's contention that the job to which he was demoted on June 29, 1947, was incorrectly allocated, it has been necessary to have the Chief, Regional Classification Division, Third U. S. Civil Service Region, conduct additional investigation in respect to the allocation feature. This investigation has not yet been completed and therefore the Third Region will be unable to analyze the evidence and to submit the report of findings and recommendation as required by the regulations until the allocation feature has been satisfactorily settled.

I have read the foregoing statement, consisting of three pages, each of which I have initialed or signed. I fully understand this statement and same is true and complete to the best of my knowledge and belief, and is made of my own free will without any threat, promise, or inducement.

(signed) WILLIAM A. BRADY
Acting Regional Director

Subscribed and sworn to before me this 28th day of August, 1947.

(signed) CHARLES S. FRANCIS
Notary Public

My Commission Expires Jan. 24, 1949.

172

Oct 31 1947

Affidavit

STATE OF NEW JERSEY, COUNTY OF CAMDEN, ss:

Roscoe G. Whipple, being first duly sworn according to law upon his oath deposes and says that he is the plaintiff in the above entitled action, and that he makes this affidavit in opposition to the motion for summary judgment filed by the defendant in this cause; That among the questions of fact arising from the issues involved in this cause is whether the plaintiff's demotion arose from a reduction in force or personnel in the Naval Shipyard at Philadelphia; That the issues concerning the reduction in force or personnel cannot be decided by the Court on affidavit evidence, and that the witnesses of the defendant should be required to appear in Court, and be subject to cross examination, and that the affidavit expects to show that the so-called reorganization plan of the design branch of the said Naval Shipyard is merely a plan to evade the provisions of the Veterans Preference Acts giving preference to honorably discharged soldiers and sailors, like the plaintiff, who are entitled to preference in their grade and salary, and that the affiant is informed and believes, and therefore alleges as a fact that since the year 1945 to the present time there has been constant reductions in force from the number employed in 1945 to wit: 42,000 to approximately 9,200 at the present time, and that the reductions in force and personnel cover the design branch of said Naval Shipyard in which this plaintiff is employed; Affiant further says that any reorganization

173 plan under which this affiant was demoted was due directly to the reduction in force and personnel and the evidence in this regard should be for the full consideration of the court; That the affidavits of the defendant filed in support of the motion for a summary judgment contain no facts except conclusions as to a reduction in force or personnel and that these facts should be fully examined by the court on a trial of the issues.

ROSCOE G. WHIPPLE

Subscribed and sworn to before me this 29th day of October, A.D. 1947.

FRANK L. ANLY

*Notary Public, and for the
County of Camden,
State of New Jersey.*

Notary Public of New Jersey.

My commission expires Apr. 17, 1951.

* * * * *

174 Filed Mar 29 1948

Affidavit in Support of Defendant's Motion for Summary Judgment

Lawson A. Moyer, being duly sworn deposes and says:

I am the Executive Director and Chief Examiner of the United States Civil Service Commission. This affidavit is submitted in support of a Motion for Summary Judgment made by the defendant in the above-entitled action.

The official records of the Civil Service Commission show that on June 6, 1947, Roscoe G. Whipple appealed to the Director of the Third United States Civil Service Region from the proposed action of the Philadelphia Naval Shipyard to reduce him from the position of Mechanical Engineer, P-3, to the position of Ordnance Engineer, P-2. This appeal was considered by the Director of the Third United States Civil Service Region under Section 14 of the Vet-

erans' Preference Act of 1944 who affirmed the action of the Philadelphia Naval Shipyard.

Mr. Whipple was notified of the disposition of his appeal in a letter dated September 12, 1947, a copy of which is annexed hereto and made a part hereof. Said letter advised him that he had the right to further appeal to the United States Civil Service Commission, Washington, D. C. The records of the Civil Service Commission do not show that Mr. Whipple ever made such further appeal to the Civil Service Commission.

LAWSON A. MOYER

Subscribed and sworn to before me, a Notary Public, in and for the District of Columbia, this 12th day of March, 1948.

R. E. SAUEDER

(SEAL)

Notary Public

My Commission expires Jan. 1, 1951.

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Letter

THIRD UNITED STATES CIVIL SERVICE REGION
OFFICE OF THE DIRECTOR, PHILADELPHIA 6, PA.
UNITED STATES CIVIL SERVICE COMMISSION

R5:A:LFC:BM
September 12, 1947

Mr. Roscoe G. Whipple
3280 - 48th Street
Merchantville, N. J.

Dear Mr. Whipple:

Further reference is made to the appeal you filed with this office under Section 14 of the Veterans' Preference Act of 1944 from the action of the Philadelphia Naval Shipyard in reducing you in grade from the position of Mechanical Engineer, P-3, to that of Ordnance Engineer, P-2, effective June 29, 1947, by reason of reorganization of the Design Branch.

Investigation of your appeal has now been completed and enclosed herewith is a copy of the findings and recommendation of this office sustaining the agency's action. As stated in the last paragraph of the enclosure, you have a right to appeal this decision to the U. S. Civil Service Commission, Washington 25, D. C., within thirty (30) days from the date of receipt of this letter.

Very truly yours,

C. D. HERTZOG
Regional Director

Encl.

* * * * *

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Filed Apr 30 1948

Order

Upon consideration of the motion of defendant for summary judgment, the affidavits and points and authorities in support thereof, all heretofore filed herein, upon argument of counsel in open Court and upon all the proceedings herein, and the Court being fully advised in the premises, it is, by the Court this 30th day April 1948,

ORDERED, ADJUDGED and DECREED that, the motion of defendant for summary judgment be, and the same hereby is, granted.

By the Court:

F. DICKINSON LETTS
Justice

Approved as to Form:

C. L. DAWSON
Attorney for Plaintiff

JOSEPH M. FRIEDMAN
Special Assistant to the Attorney General
Attorney for Defendant

* * * * *

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Filed Jul 7 1947

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

SPERRY H. REYNOLDS, 1453 Rosalie Street, Philadelphia 24,
Penna., *Plaintiff*,

vs.

JAMES FORRESTAL, Secretary of the Navy, Washington, D. C.,
Defendant.

Civil Action No. 2758

Suit for a Preliminary and Permanent Mandatory Injunction to Require the Defendant to Restore the Plaintiff to Governmental Position and for Other Relief

The plaintiff for his cause of action complains of the defendant and alleges:

1. That the plaintiff is a citizen of the United States, and resides at 1453 Rosalie Street in the city of Philadelphia, State of Pennsylvania.

2. That the defendant is the duly appointed, acting and qualified Secretary of the Navy of the United States, and in such capacity is charged by law with the administration of all laws enacted by Congress of the United States relating to the Navy Department of the United States, and is specifically charged by law with the employment of civilian personnel under the jurisdiction of the Navy Department.

3. That many civilian employees of the Navy Department are required to be qualified in their various employment positions according to provisions of the Civil Service Act, the rules and regulations of the Civil Service Commission, and are in a classification which is generally known as the Classified civil service of the United States. That the defendant is required under the laws of the United States to fill any and all positions in the Navy Department falling within the classified civil service from persons who

183 have been found to be duly qualified for such positions by the United States Civil Service Commission.

4. That the plaintiff enlisted in the United States Army on February 12, 1918, and was honorably discharged therefrom on March 5, 1919.

5. The plaintiff further alleges that on May 16, 1939, he entered the employment of the United States government at the Philadelphia Naval Shipyard, having previously qualified as such employee under the rules of the United States Civil Service Commission, and that he continued in this employment as a permanent civil service employee until the present time.

6. The plaintiff alleges that during all of the time that he was employed under the jurisdiction of the defendant as alleged in paragraph 5 hereof, he was a classified civil service employee and entitled to all of the rights, benefits, and privileges of the Civil Service Act, its various amendments, the provisions of Title 5, U.S.C.A., 648, and the provisions of the Veterans Preference Act of June 27, 1944, which provisions of said Acts are binding on the part of the said defendant.

7. The plaintiff further alleges that on May 12, 1947, he was employed as an Electrical Engineer P-4 grade he was notified that on June 29, 1947, he would be demoted to the grade of Electrical Engineer P-3, and that his salary would be reduced from \$5,152.80 per annum to a salary of \$4,902.00 per annum. The plaintiff alleges further that during all of the time that he has been employed at the Philadelphia Naval Shipyard, and at the present time his efficiency rating has been good or better, but notwithstanding the plaintiff's rights to preferential employment in the grade which he held on June 29, 1947, under the Acts of Congress hereinbefore alleged, the said defendant demoted the plaintiff as of June 29, 1947, and placed in his position and grade several employees, to wit: J. F. McNeff, H. C. Nagel, J. W. Best, and J. B. Hasson, all of whom are now retained by the said defendant, in the grade Electrical Engineer Grade

P-4, and all of whom are not soldiers or sailors of the United States who have been honorably discharged, or who have not collectively or severally any preference rights of employment in the grade from which the plaintiff was demoted on June 29, 1947.

184 8. The plaintiff alleges the act of the defendant in demoting the plaintiff from Electrical Engineer P-4 to Electrical Engineer Grade P-3, as of June 29, 1947, and the retention of the said employees J. F. McNeff, H. C. Nagel, J. W. Best and J. B. Hassen as Electrical Engineers Grade P-4, is in direct violation of the Acts of Congress of the United States, wholly illegal and unlawful, and known by the said defendant to be illegal and unlawful.

9. That unless this Court grants a preliminary mandatory injunction requiring the said defendant to restore the plaintiff to the position from which he was illegally and unlawfully demoted as of June 29, 1947, and requires the defendant to pay to the plaintiff his salary in Electrical Engineer Grade P-4, from June 29, 1947, until date of Judgment, and the Court issues a final mandatory injunction in this action, the plaintiff will be without remedy and will suffer irreparable damages. That the plaintiff has no speedy adequate remedy at law.

WHEREFORE, the plaintiff prays:

1. That due process of this Court issue directing and commanding the said defendant to appear and answer this Bill of Complaint.

2. That the Court issue a preliminary mandatory injunction directing and requiring the said defendant to restore the plaintiff to the position of Electrical Engineer Grade P-4, as of June 29, 1947, the date of his illegal and unlawful demotion, and that upon a final hearing that the said injunction be made permanent.

3. That the Court order and direct the said defendant to pay to the plaintiff his salary based upon the plaintiff's rightful grade of Electrical Engineer Grade P-4, as of June 29, 1947, to the date of judgment.

4. That the plaintiff have such other and further
 185 relief as to the Court may appear to be proper and
 just.

SPERRY H. REYNOLDS,
Plaintiff.

C. L. DAWSON,
Attorney for the Plaintiff,
 917 Fifteenth Street, N.W.,
 Washington 5, D. C.

* * * * *

186 Filed Sep 5 1947

**Defendant's Motion for Summary Judgment Pursuant to
 Rule 56 of the Federal Rules of Civil Procedure**

Now comes the defendant, and upon the complaint on file
 in this Court and upon the annexed affidavits, respectfully
 moves the Court for summary judgment pursuant to Rule
 56 of the Federal Rules of Civil Procedure on the ground
 that there are no genuine issues as to any material facts
 and defendant is entitled to such judgment as a matter of
 law and for such other and further relief as to the Court
 may seem just and proper.

PEYTON FORD
 Peyton Ford
Assistant Attorney General

GEORGE MORRIS FAY
 George Morris Fay
United States Attorney

Of Counsel:

JOSEPH M. FRIEDMAN
Special Assistant to the Attorney General

* * * * *

Filed Sep 5 1947

Affidavit

Charles R. Peck, being first duly sworn, deposes and says:

1. That he is employed by the Navy Department as Industrial Relations Assistant, Bureau of Ships; that the Philadelphia Navy Shipyard is under the cognizance of the Bureau of Ships; and that in his capacity as Industrial Relations Assistant the records of the Navy Department pertaining to civilian employees of the Bureau of Ships are under his jurisdiction and cognizance and that pursuant to his official duties he has examined and is familiar with the records of the Navy Department, Washington, D. C. pertaining to the reassignment to another position involving a change to lower grade of Sperry H. Reynolds, plaintiff in the above captioned action, from Electrical Engineer, P-4 to Electrical Engineer, P-3, U. S. Naval Shipyard, Philadelphia, Pennsylvania, which became effective June 29, 1947, in accordance with Section 14 of the Veterans' Preference Act of 1944 (58 Stat. 390; 5 U. S. C. 863).

2. That the records of the Navy Department show that the plaintiff was employed at the U. S. Navy Yard, Philadelphia, Penna. on May 16, 1939 as a Senior Engineering Draftsman (Electrical), SP-6, he has remained in continuous service thereafter and was advanced by subsequent promotions to the position of Electrical Engineer, P-4, which he received on June 1, 1945; and that his employment, while continuous, involved a transfer from the Philadelphia Naval Shipyard to the Office of Supervisor of Shipbuilding, Cramp Shipbuilding Corporation on May 11, 1942 and back to the Philadelphia Naval Shipyard on June 16, 1944.

3. That the Plaintiff has established his right to be accorded Veterans' Preference by virtue of military service in World War I; is entitled to five points preference

thereby; and has presented no evidence of any service-connected disability.

4. That in October 1946 the Bureau of Ships, having cognizance over Philadelphia Naval Shipyard, concluded a survey of Design Branch problems in all naval shipyards throughout the country and at Pearl Harbor; that 188 the purpose of this survey was to establish uniform organizations and uniform personnel ratings, in addition to insuring a design force adequate to support the requirements of each shipyard, those of the Bureau of Ships and of the Bureau of Ordnance.

5. That as a result of the foregoing survey, the Bureau of Ships on November 13, 1946, addressed letters to all shipyard commanders, establishing "A", "B", and "C" design shipyards; that the subject of these letters was "Size and Organization of the Design Branch, Planning Department, U. S. Naval Shipyards"; that the "A" yards, which include Philadelphia, were so designated because they are the shipyards which are to maintain the largest of the Design Branches; that the "A" yards were also designated as "lead" ordnance design yards, defined as those in which design work for the Bureau of Ordnance will be assigned; that "B" design shipyards were defined as those which are to maintain a medium size Design Branch, as distinct from the "A" design shipyards (largest Design Branch) and "C" design shipyards (smallest Design Branch); that naval officer personnel complements were fixed in these letters as well as the complements for specified types of civilian positions; and that the numbers of personnel and their rank or grade were evolved, as a result of the survey, from what was arrived at as a standard "A", "B", or "C" yard.

6. That the foregoing letters of November 13, 1946 instructed the shipyards, inter alia, to reassign civilian personnel in accordance with prescribed plans, pending subsequent official action respecting the allocation of the posi-

tions in the new organization and the actual paper processing of the reassignments, some of which would involve changes to lower grade; that the yards were requested in these letters (attached to which were proposed organization charts of "A", "B" or "C" Design Branch as applicable) for specific comments on situations where the shipyard desired to obtain exception from the prescribed standards; that the Bureau of Ships requested the assistance of the Head Engineers of the shipyards in preparing position descriptions for the civilian positions in the reorganized Design Branches; and that a committee comprised of the Head Engineers from the various shipyards met in Washington, D. C. in February 1947 to assist in the goal of achieving maximum position standardization and uniformity in the reorganized Design Branches of the shipyards.

7. That the Bureau of Ships, in the interest of promoting the efficiency of the service, utilized to the utmost the service of all of the facilities to correct the unsatisfactory situation resulting from necessary staffing during the war-

time period; that it was apparent prior to the re-
 189 organization that the Design Branches at the various shipyards, as a result of reductions in force and normal personnel attrition, were top-heavy in the number of personnel occupying the higher grade positions; that the conditions surrounding the wartime organization no longer existed and were no longer applicable to peacetime conditions; that in view of this the Bureau of Ships proceeded to establish a new organization for the purpose of taking over the work of the old Design Branches; that as a consequence of the establishment of a new organization it became necessary to allocate new positions; that the Bureau of Ships directed the various shipyards, including the Philadelphia Naval Shipyard, to utilize the service of all personnel in the old organization in the new organization; that due to the limitations imposed by the Bureau of Ships as to the numbers and grades of new positions in the

new organization some employees were "down-graded", that is, reassigned to positions of lower grade than they occupied in the old organization; and that the plaintiff was one of those "down-graded" (from Electrical Engineer, P-4 to Electrical Engineer, P-3).

8. That, pursuant to the foregoing plan for a new organization, certain non-veteran employees, namely Mr. Joseph F. McNeff, Mr. Harold C. Nagel, Mr. Jess W. Best, Jr., and Mr. James B. Hasson, were retained at the grade of Electrical Engineer, P-4; that in connection with the determination to retain the aforesaid non-veterans at a level higher than that of the plaintiff, full consideration was given to the qualifications of the employees involved and the personnel adjustment made would not have been effected if the plaintiff were as well, or better, qualified than the non-veterans; that the sole reason motivating this personnel adjustment was that the aforesaid non-veterans had qualifications superior to those of the plaintiff; that this personnel adjustment was based solely on "such cause as will promote the efficiency of the service" within the meaning of Section 14 of the Veterans' Preference Act of 1944; and that no reductions in force were involved in the Design Branch reorganization, with the consequence that regulations pertaining to retention points and reductions in force were not applicable.

9. That plaintiff's education and experience record prior to entrance on duty at the Philadelphia Naval Shipyard indicates that he completed 8 years of grammar school plus 2 years of high school and thereafter attended Pratt Institute for two years, receiving a Certificate of Graduation on June 19, 1924; that he had 9 years and 2 months of general experience in connection with electrical trade and 5 years and 8 months experience as an electrical draftsman; that plaintiff was promoted to Engineer Draftsman (Electrical), SP-8, on April 1, 1942 and remained in
190 that rating only until May 17, 1942 when he was transferred to the Supervisor of Shipbuilding,

Cramp Shipbuilding Company, Philadelphia, as Associate Electrical Engineer, P-3; that plaintiff has been primarily assigned to outside liaison work since he transferred back to the Yard in June 1944; that this position consists primarily of making "on the spot" decisions for design changes in advance of correction to the plans by either the originator in the Electrical and Electronics Section of the Yard or some other design activity; that many times when plaintiff could not make "on the spot" decisions on the particular job involved he would confer with his supervisor or other men in the Electric and Electronics section for assistance in making the decision; that there is no real design work involved in such duties; that plaintiff did not originate designs, but merely coordinated the design work done by the Electric and Electronics Section with that of other sections in the Design Branch and with the production division; that plaintiff's work with the supervisor of shipbuilding at the Pratt Shipbuilding Company, Philadelphia, involving checking the private yards plans with those of the Navy Department did not require any design work; that prior to the plaintiff's transfer to the Pratt Shipbuilding Company, he had approximately 1 month of design work; during the initial period of the plaintiff's employment at the Philadelphia Naval Shipyard from May 16, 1939 until March 16, 1941, his work was in connection with the conversion of merchant vessels into naval auxiliaries, which work consisted primarily in assisting others; and that from May 16, 1941 until April 1, 1942 plaintiff was assigned duties involving work in drafting, which work was always checked in detail before being issued and consisted mainly of tracing work and elementary drafting work.

10. That the education and experience record of Mr. Joseph F. McNeff indicates that he graduated from high school in June 1926, attended the Drexel Institute of Technology from December 1931 to June 1933, receiving 21½ semester hours credit therefore, again attended the same institution from March 1941 to August 1941, taking 120

class hours in Electricity and Machinery, received instruction at the Camden Commercial School, Camden, New Jersey from September 1934 to June 1936, and received 3 hours instruction per week in the field of Marine Drafting at the Camden County Vocational School, Camden, New Jersey from October 1938 to June 1939 and again from September 1939 to February 1940; that Mr. McNeff's record further reveals he had 9 years and 2 months of general experience as a Wireman and Electrician and one year and 10 months as a Draftsman prior to the date he entered on duty at the Philadelphia Naval Shipyard on June 5, 1934 as an Assistant Engineering Draftsman (Electrical), SP-4; that 191 he was promoted to SP-5 on May 16, 1940, SP-6 on November 1, 1940, SP-7 on May 1, 1941 and to Associate Electrical Engineer, P-3 on April 1, 1942; that on November 16, 1942 he was promoted to Electrical Engineer P-4, and has been assigned design work in power and lighting during the entire period of his employment at the Yard; that Mr. McNeff's efficiency ratings assigned during the last 4 years have been Excellent; that he was assigned at the P-4 rating to the new position in the Power and Lighting Group under the reorganization on June 29, 1947 and that his education, experience prior to his entrance on duty and his work record during the period of employment with the Philadelphia Naval Shipyard clearly indicate that he possesses qualifications superior to those of the plaintiff and should retain the P-4 position as Electrical Engineer, in preference to the plaintiff, to promote the efficiency of the service.

11. That the education and experience record of Mr. Harold C. Nagel indicates that he graduated from high school in June 1926 and subsequently attended a course given by the Bell Telephone Company of Pennsylvania, covering Telephony and Voice Transmission consisting of 18 lessons; that prior to his appointment on October 9, 1936 as an Engineering Draftsman (Electrical) SP-5 he possessed a record of 10 years and 3 months experience as a

Draftsman in outside employment; that he was promoted through various grades to the position of Senior Electrical Engineer P-5 and subsequently, beginning April 16, 1943, supervised in its entirety all design work at the Philadelphia Naval Shipyard for electrical power distribution; that previous to the aforesaid promotion he was engaged in design work concerned with electrical power and distribution systems; that for the year 1945 his efficiency rating was Excellent and for the years 1946 and 1947 was Very Good; and that his experience prior to his entrance on duty and his work record during the period of Employment with the Philadelphia Naval Shipyard clearly indicate that he possesses qualifications superior to those of the plaintiff and should retain the P-4 position as Electrical Engineer, in preference to the plaintiff, to promote the efficiency of the service.

12. That the education and experience record of Mr. Jess W. Best Jr. indicates that he graduated from high school in January 1926, and thereafter attended Ohio University, receiving a BS Degree in Electrical Engineering on June 8, 1931; that he was appointed Engineering Draftsman (Electrical) SP-5 at the Philadelphia Naval Shipyard on March 2, 1936; that prior to this appointment he had 4 months experience as a Draftsman involving design and layout work in the field of home photophone motion picture industry; that subsequent to this appointment he was promoted through various ratings to the rating of Senior Electrical Engineer, P-5, which he received on November 1, 1942; that his efficiency rating for the years 1944, 1945 and 1947 have been Excellent and for the year 1946 was Very Good; that since his promotion to P-5 on May 1, 1942 his assignment has been in a supervisory capacity in the development of design in the preparation of contracts and working plans for the manufacture, repair, overhaul and installation of electric generator switch boards, and electric power distribution systems; and that his record clearly indicates that he possesses qualifications superior to

those of the plaintiff and should retain the P-4 position as Electrical Engineer, in preference to the plaintiff, to promote the efficiency of the service.

13. That the education and experience record of Mr. James B. Hasson indicates that he graduated from elementary school in September 1922, attended the Spring Garden Institute, Philadelphia during 1924 and 1925, pursuing a course of study in Machinery and attended the Drexel Institute of Technology from 1926 to 1929, pursuing courses in Electrical Engineering; that he was first appointed to the Philadelphia Naval Shipyard on July 14, 1924 as an Apprentice Electrical Engineer; that he hereafter, by various promotions, was advanced to the grade of Senior Electrical Engineer P-5 which he received on November 1, 1942; that his efficiency ratings were Very good for the year 1943, Excellent for the years 1944 and 1945 and Very Good for the years 1946 and 1947; and that Mr. Hasson's employment at the Shipyard since July 14, 1924, his assignment to the Design Branch since September 16, 1926 and his promotion to the rank of Senior Electrical Engineer P-5 in 1942, in comparison with the plaintiff's promotion to the rank of P-4 on June 1, 1945, clearly indicate that Mr. Hasson possesses qualifications superior to those of the plaintiff and should retain the P-4 position as Electrical Engineer in preference to the plaintiff, to promote the efficiency of the service.

14. That the efficiency rating assigned to the plaintiff for the years 1945, 1946 and 1947 was Very Good.

15. That the plaintiff has been accorded full procedural rights and safeguards contemplated by the Veterans' Preference Act of 1944, specifically Section 14 thereof, in that, by letter dated 28 April 1947, copy attached hereto and made a part hereof as Exhibit (a), the plaintiff was, by direction of the Commander, Philadelphia Naval Shipyard, given in excess of thirty days advance written notice of the proposed change in grade (effective June 29, 1947), which letter stated specifically and in detail the rea-

193 sons for the proposed action and allowed the plaintiff a reasonable time (five days) for answering the same personally and in writing.

CHARLES R. PECK.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia this 3rd day of September, 1947.

AGNES M. GALLAGHER,
Notary Public.

My Commission expires August 31, 1948.

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Filed Sep 5 1947

PHILADELPHIA NAVAL SHIPYARD
NAVAL BASE STATION
PHILADELPHIA 12, PA.

April 28, 1947

L. S. (Reynolds, S. H.)
(Code 170e)

To: Sperry H. Reynolds

Via: Design Supt.

**Subj: Notice of Proposed Change to Lower Grade Because
of Reorganization**

1. The Bureau of Ships has required the reorganization of the Design Branch, Planning Department, Philadelphia Naval Shipyard, in order to establish uniform organizations and uniform grade levels as between yards, in addition to insuring a design force, country-wide, adequate to discharge the Navy's over-all responsibilities and mission in regard to design work.

2. A review of all of the jobs in the P-4(Elec) level which are available in the reorganized Design Branch indicates that you are qualified for the following positions which will be filled by the employees shown:

Pos. Descr.	Title	
2-187	Electrical Engineer, P-4	J. F. McNeff
2-187-3	Electrical Engineer, P-4	H. C. Nagel
2-187-5	Electrical Engineer, P-4	J. W. Best
2-187-6	Electrical Engineer, P-4	J. B. Hasson

We have placed these employees in these positions because it has been determined that they have greatly superior qualifications than those you possess. Consequently, in order to promote the efficiency of the service and to complete the reorganization of the Design Branch, in accordance with enclosure 1, it is proposed to effect your change to lower grade and salary, effective 29 June 1947, from Electrical Engineer, P-4, \$5152.80 to Electrical Engineer, P-3, \$4902.00. There may also be other positions in this level which you may feel you are qualified to fill. You may, if you wish review all the position descriptions in the P-4 level as well as the qualifications of all the employees who will occupy the positions which you may feel you are qualified to fill in addition to those described above. This information is available in the Industrial Relations Division.

3. The reorganization of the Design Branch, which makes your change to lower grade necessary, does not involve a reduction in force. Regulations governing reduction in force, are, therefore, not applicable to personnel actions taken in connection with or because of this reorganization.

4. You may, after consultation with your supervisor, take such leave as may be practicable before your change to lower grade becomes effective.

5. Inasmuch as you are entitled to Veteran Preference, you are hereby notified that you may submit reasons, orally and in writing, to the Industrial Relations Officer, Bldg. 698, IVb Unit, as to why this proposed action should not be taken. If you desire to submit reasons, they must be submitted within five days of receipt of this notice.

By direction of the Commander.

E. H. SCHANTZ,
Industrial Relations Officer.

Encl. 1—BuShips ltr. NY3/A3-1(740)
EN28/A2-11, 12 Mar. 1947

Personally appeared before me, a Notary Public in and for the county of Philadelphia, State of Pennsylvania, Frank A. Robey, Jr., who states that the above is a true and accurate copy of the Notice of Proposed Change to Lower Grade because of Reorganization as it appears in the official personnel record of Sperry H. Reynolds.

FRANK A. ROBEY, JR.,
Personnel Assistant,
Philadelphia Naval Shipyard.

Subscribed and sworn to before me this 3rd day of September, 1947.

CHARLES DI SANTO,
Notary Public.

My Commission expires January 2, 1949.

195

Filed Sep 5 1947

COMMONWEALTH OF PENNSYLVANIA, COUNTY OF PHILADELPHIA, ss:

I, **William A. Brady**, Acting Regional Director, Third U. S. Civil Service Region, Room 305, Custom House Building, Second and Chestnut Streets, Philadelphia 6, Pa., being first duly sworn, do depose and state:

That, the records of the Third U. S. Civil Service Region disclose that under date of June 4, 1947, Mr. Sperry H. Reynolds (Born May 5, 1897), residing at 1453 Rosalie Street, Philadelphia 24, Pa., filed an appeal with the Third Regional Office under Section 14 of the Veterans' Preference Act of 1944, from the action of the Philadelphia Naval Shipyard, Navy Department, Naval Base Station, Philadelphia 12, Pa., in changing his position to a lower grade and salary, effective June 29, 1947, from Electrical Engineer, P-4, \$5152.80, to Electrical Engineer, P-3, \$4902.00,

because of a reorganization of the Design Branch, Planning Department, Philadelphia Naval Shipyard.

That, Mr. Reynolds submitted to this office satisfactory evidence of active service in the United States Army from February 12, 1918, to March 5, 1919, and of his honorable discharge therefrom. Official personnel records of the agency disclose that the appellant was given a probational appointment as Engineering Draftsman, SP-6, \$2000 per annum, on May 16, 1939; and that he has been continuously employed since that time. Thus the appellant established his entitlement to appeal from the adverse decision of the agency in reducing him in grade and salary under Section 14 of the Veterans' Preference Act.

That, the notification of the proposed action dated April 28, 1947, from the Philadelphia Naval Shipyard advised Mr. Reynolds that the Bureau of Ships, Navy Department, Washington 25, D. C., by letter dated March 12, 1947, to the Commander of the Philadelphia Naval Shipyard, ordered a reorganization of the Design Branch, Planning Department, Philadelphia Naval Shipyard, "in order to establish uniform organizations and uniform grade levels as between yards, in addition to insuring a design force, country-wide, adequate to discharge the Navy's over-all responsibilities and mission in regard to design work." The advance written notice to the appellant further advised him that "in order to promote the efficiency of the service and to complete the reorganization of the Design Branch . . . it is proposed to effect your change to lower grade and salary, effective 29 June, 1947, from Electrical Engineer, P-4, \$5152.80 to Electrical Engineer, P-3, \$4902.00." The same notification further informed Mr. Reynolds that he was qualified to fill any of the Electrical Engineer, P-4, positions in the Power and Light Group of the Electrical and Electronics Section in the reorganized Design Branch. However, it was stated that other employees with "greatly superior qualifications" were placed in these four positions as the result of which it would be necessary to change the

appellant to a lower grade. Finally the advance written notice of April 28, 1947, advised the appellant that the reorganization of the Design Branch did not involve a reduction in force, and that the regulations governing reduction in force were not applicable to his particular case.

196 That, under date of May 12, 1947, the Industrial Relations Officer, Philadelphia Naval Shipyard, advised the appellant of the decision of the agency to proceed with his demotion, which was to become effective June 29, 1947. This final notice of adverse decision advised the appellant of his right to appeal to the U. S. Civil Service Commission under Section 14 of the Veterans' Preference Act of 1944.

That, Mr. Reynolds, in filing his appeal with the Third Civil Service Region on June 4, 1947, stated that "the Veterans' Preference Act; Public Law #299 Chapter 350 Section 4, August 23rd, 1912 (37 Stat; 413) Section 28 and Executive Order of June 4th, 1925, Section 30 and Public Law #359 Section 14 and 18 have been violated." Mr. Reynolds stated further that under the proposed reorganization of the Design Branch there would be eight Electrical Engineer, P-4, positions, only one of which would be filled by a veteran. He maintained that he had longer government service than three of these eight employees and "longer experience than most of them." Mr. Reynolds stated finally that the efficiency of the proposed reorganization "will not be impaired in any way by my retention of the present P-4 grade."

That, the Third U. S. Civil Service Region conducted an investigation of the above appeal at Philadelphia, Pa., on June 16, 18, 19 and 24, 1947, during the course of which affidavits and sworn statements were secured from the appellant and from officials and employees of the Philadelphia Naval Shipyard who were familiar with the issues in the case. Prior to initiating the investigation, the Commission's representative interviewed the appellant on June 13, 1947, at which time he executed an affidavit. In this affi-

davit Mr. Reynolds contended that he was now performing the duties of the new Electrical Engineer, P-3, position to which he would be demoted on June 29, 1947; and that the duties of the new position were exactly similar to the duties of the former P-4 position he held. At the same time he referred to the four employees who the agency maintained had superior qualifications than he and who were filling the P-4 positions in the reorganized Design Branch. The appellant claimed that "I don't think there is any man in the group doing work that I cannot equally do with the ordinary indoctrination period given a man when he takes over a new assignment." Mr. Reynolds, likewise, referred to five other P-4 positions in the Electrical and Electronics Section of the reorganized Design Branch and in regard to the five employees who were to fill these five positions he stated: "At the present time and the situation being as it is, I cannot definitely say I am better qualified than any of the nine men, but I do contend that I can fill the positions just as well as any of them." Furthermore, Mr. Reynolds stated: "Technically, I think that I am equal to any of them and after the usual indoctrination period, I can fill any of the positions mentioned without it affecting the efficiency of the service." In the same affidavit the appellant stated that in his opinion the whole reorganization of the Design Branch was due to a past reduction in force and that this was one of the reasons which brought about and required the reduction in grade in the cases of certain employees.

197 That, during the course of the investigation an affidavit was secured from the Industrial Relations Officer, Philadelphia Naval Shipyard, on June 24, 1947 This official stated that the reorganization of the Design Branch did not involve a reduction in force, and that any reduction in grade which was made in the case of any employee was made in order to better promote the efficiency of the service. This official likewise stated that education, past experience and efficiency ratings were the factors used

in determining who of the employees had the best qualifications and who should be placed in certain positions in order to promote the efficiency of the service. The final determination as to which employees were to fill any particular positions was made by the Ship Design Director of the Design Branch. Likewise, the Industrial Relations Officer stated that the changes to lower grades were not reclassification actions but were part of the reorganization. He stated that no survey was made of the old positions, but that "new positions were set up and in order to promote the efficiency of the service, the men with the best qualifications for the particular positions were assigned to those positions." He stated that the position descriptions for the new positions were issued by the Bureau of Ship after they had been allocated by the Classification Branch, Office of Industrial Relations, Navy Department, Washington, D. C. Finally he stated that these position descriptions would be used for all the positions in the Design Branch until a survey could be made by the Area Wage and Classification Office. The Industrial Relations Officer stated that he did not know when such a classification survey would be conducted.

That, a lengthy affidavit was secured under date of June 24, 1947, from Mr. A. M. Stefano, Ship Design Director, Planning Department, Philadelphia Naval Shipyard. In this six-page affidavit, this official commented at great length on the respective qualifications of the appellant and of the other employees who were in competition with him for the P-4 positions. Mr. Stefano stated as follows:

"In considering the men for their respective positions under the reorganization, we used the factors of Education, Past Experience, and Efficiency Ratings. By using these factors we consider the men being placed in the Electrical Engineer, P-4, positions in the Electrical and Electronics Section to have greatly superior qualifications and, therefore, that it promotes the efficiency of the service to place them in their respective positions in preference to Mr. Reynolds."

That, in regard to the appellant's contention that in his present position of Electrical Engineer, P-3, he is performing the same duties as he did when his designation was Electrical Engineer, P-4, the Ship Design Director commented as follows:

"He is right in saying that in his new assignment as Electrical Engineer, P-3, under the reorganization, he is doing the same work and has the same duties as those he has had since 1944. His work is exactly the same 198 as it was before the reorganization except now the duties of the position have been put on a new job sheet and set up as a P-3 position by the Area Wage and Classification Office. So far as he is concerned, he does the same work that he has been doing since he transferred back to the Shipyard in 1944."

That, in view of the appellant's contention that the duties of his present P-3 position are the same as the duties performed when he was in a P-4 position, it was considered necessary to investigate the allocation feature of Mr. Reynolds' appeal and to determine whether or not his present position of Electrical Engineer, P-3, is correctly allocated in accordance with Commission standards. The case from the classification standpoint was therefore investigated by the Chief, Regional Classification Division, Third U. S. Civil Service Region. Under date of August 22, 1947, the facts relating to this investigation were submitted to the Chief, Personnel Classification Division, U. S. Civil Service Commission, Washington 25, D. C., for a decision as to what grade the appellant's position is correctly allocable.

That, pending a decision from the Central Office Personnel Classification Division, U. S. Civil Service Commission, the Third U. S. Civil Service Region will be unable to analyze the evidence in this case and to submit a report of findings and recommendation in accordance with the regulations.

That, under date of June 24, 1947, the appellant, in a signed affidavit, stated that he did not desire an oral hear-

ing before the Veterans Appeals Examiner of this region.

I have read the foregoing statement, consisting of four pages, each of which I have initialed or signed. I fully understand said statement and same is true and complete to the best of my knowledge and belief, and is made of my own free will without any threat, promise or inducement.

/s/ WILLIAM A. BRADY,
Acting Regional Director.

Subscribed and sworn to before me this 28th day of August 1947.

/s/ CHARLES S. FRANCIS,
Notary Public.

My Commission expires Jan. 24, 1949.

* * * * *

199

Filed Oct 30 1947

Affidavit

STATE OF PENNSYLVANIA, COUNTY OF PHILADELPHIA, ss:

Sperry H. Reynolds, being first duly sworn according to law upon his oath deposes and says that he is the plaintiff in the above entitled action and that he makes this affidavit in opposition to the motion for a summary judgment filed by the defendant in this cause; That among the questions of fact to be determined from a trial of the issues in this cause is whether the plaintiff's demotion arose from a reduction in force or personnel in the Naval Shipyard at Philadelphia; That the issues concerning the reduction in force or personnel cannot be determined upon affidavits but only by a trial of the issues and that the witnesses of the defendant should be required to appear in court and be subject to cross examination as the plaintiff expects to prove that the so-called reorganization plan of the defendant is merely an attempt to evade the provisions of the Veterans Preference Acts giving to this plaintiff a preference in his employment, and to the grade from which he was demoted;

That the affiant is informed, and believes, and therefore alleges as a fact that since the year 1945 the personnel of the Naval Shipyard at Philadelphia has been reduced from 45,000 employees to 9,200 employees at the present time, and that such a reduction in force or personnel included the design branch in which this affiant is employed, and that the affiant will prove on a trial of the issues of fact in this cause that his illegal demotion was directly due to the reduction in force or personnel and as a part of the 200 reduction in force or personnel plan; That this question of fact is one to be determined by a trial of the issues, and that dispute as to the facts in this regard exists between the plaintiff and the defendant.

SPERRY H. REYNOLDS.

Subscribed and sworn to before me this 29th day of October, A.D. 1947.

ALLEN W. LIGHTFOOT,
Notary Public,

in and for the County of Philadelphia, State of Pennsylvania.

My Commission expires January 2, 1949.

* * * * *

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Affidavit in Support of Defendant's Motion for Summary Judgment

Lawson A. Moyer, being duly sworn deposes and says:

I am the Executive Director and Chief Examiner of the United States Civil Service Commission. This affidavit is submitted in support of a Motion for Summary Judgment made by the defendant in the above-entitled action.

The official records of the Civil Service Commission show that on October 25, 1947, Sperry H. Reynolds appealed to the United States Civil Service Commission from the decision of the Director of the Third United States Civil Service Region affirming the action of the Philadelphia Naval Shipyard which reduced him in grade from Electrical Engineer, P-4, to Electrical Engineer, P-3, effective June 29, 1947.

Mr. Reynolds' appeal was considered by the Board of Appeals and Review of the United States Civil Service Commission which affirmed the decision of the Director of the Third United States Civil Service Region. Mr. Reynolds was notified of the disposition of his appeal in a letter dated January 9, 1948, a copy of which is annexed hereto and made a part hereof.

LAWSON A. MOYER.

Subscribed and sworn to before me, a Notary Public, in and for the District of Columbia, this 12th day of March, 1948.

? ? ?

(SEAL)

Notary Public.

My Commission expires January 1, 1951.

202

Letter

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON 25, D. C.

File BAR:ABJ

January 9, 1948

Mr. Sperry H. Reynolds
1453 Rosalie Street
Philadelphia 24, Pennsylvania

Dear Mr. Reynolds:

Reference is made to your appeal, under the provisions of Section 14 of the Veterans' Preference Act of 1944, from the decision of the Commission's Third U. S. Civil Service Region, sustaining the action of the Philadelphia Naval Shipyard in reducing you in grade, effective June 29, 1947, from the position of Electrical Engineer, P-4, to Electrical Engineer, P-3, as the result of a reorganization of its Design Branch.

The decision of the Third Region was based upon the considerations set forth in its memorandum of September 26, 1947, a copy of which was furnished you.

The Board of Appeals and Review, after a careful consideration of all the facts and circumstances in your case, has found that the decision of the Commission's Third Region was correct and that decision, therefore, has been affirmed upon appeal.

Very respectfully,

JOHN F. EDWARDS, *Chairman*,
Board of Appeals and Review.

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Filed Apr 30 1948

Order

Upon consideration of the motion of defendant for summary judgment, the affidavits and points and authorities in support thereof, upon argument of counsel in open court and upon all the proceedings herein, and the Court being fully advised in the premises, it is, by the Court this 30th day of April, 1948,

ORDERED, ADJUDGED and DECREED that, the motion of defendant for summary judgment be, and the same hereby is, granted.

By the Court:

F. DICKINSON LETTS,
Justice.

Approved as to Form:

C. L. DAWSON,
Attorney for Plaintiff.

JOSEPH M. FRIEDMAN,
*Special Assistant to the Attorney General,
Attorney for Defendant.*

* * * * *

209

Filed Jul 7 1947

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

DAVID R. HUNTER, 124 Drexel Court Apartments, Drexel
Hill, Pennsylvania, *Plaintiff*,

v.

JAMES FORRESTAL, Secretary of the Navy, Washington, D. C.

HARRY B. MITCHELL, President, Civil Service Commission,
Washington, D. C.

FRANCES PERKINS, Member Civil Service Commission,
Washington, D. C.

and

ARTHUR S. FLEMMING, Member Civil Service Commission,
Washington, D. C., *Defendants*.

Suit for a Preliminary and Permanent Mandatory Injunction, and for a Declaratory Judgment Establishing Plaintiff's Rights Under the Veterans Preference Acts, and for Such Other Relief as May be Proper

The plaintiff for his cause of action complains of the defendants and alleges:

1. That the plaintiff is a citizen of the United States and resides at 124 Drexel Court Apartments, in Drexel Hill, State of Pennsylvania.

2. That the defendant, James Forrestal, is the duly appointed, acting and qualified Secretary of the Navy and is sued in that capacity.

3. That the defendant, Harry B. Mitchell, is the duly appointed, acting and qualified President of the United
210 States Civil Service Commission.

4. That the defendant, Frances Perkins, is a duly appointed, acting and qualified member of the United States Civil Service Commission.

5. That the defendant, Arthur S. Flemming, is a duly appointed, acting and qualified member of the United States Civil Service Commission.

6. That the said defendants, Harry B. Mitchell, Frances Perkins, and Arthur S. Flemming, constitute the complete membership of the United States Civil Service Commission and are charged by law with the duty and responsibility of administering the Acts of Congress known as the Civil Service Act.

7. That the defendant, James Forrestal, is the duly appointed, acting and qualified Secretary of the Navy of the United States, and in such capacity is charged by law with the administration of all laws enacted by Congress of the United States relating to the Navy Department of the United States, and is specifically charged by law with the employment of civilian personnel under the jurisdiction of the Navy Department.

8. That many civilian employees of the Navy Department are required to be qualified in their various employment positions according to provisions of the Civil Service Act, the rules and regulations of the Civil Service Commission, and are in a classification which is generally known as the classified civil service of the United States. That the defendant, James Forrestal, is required under the laws of the United States to fill any and all positions in the Navy Department falling within the classified civil service from persons who have been found to be duly qualified for such positions by the United States Civil Service Commission.

9. The plaintiff further alleges that he is duly qualified as a permanent civil service employee of the United States and entered the employment of the United States at the Philadelphia Naval Shipyard on November 27, 1939, and that he was employed thereafter continuously to the time of the signing of this bill of complaint.

10. That during all of the time that the plaintiff was employed at the Philadelphia Naval Shipyard as alleged in Paragraph 9 hereof, his efficiency rating was good
211 or better, and was and now is good or better.

11. That the plaintiff received a number of promotions after entering upon his employment at the Philadelphia Naval Shipyard, and on to wit: February 24, 1946, he was given a rating of P-3 Allowance Engineer (Hull), which position he held until the 29th day of June, 1947.

12. That on April 29, 1947, the plaintiff was advised in writing by the defendant, James Forrestal, that he was demoted from the rank of P-3 Allowance Engineer to the rank of Mechanical Engineer, effective as of June 29, 1947, and that his salary would be reduced from \$4,400.00 per annum to \$4,149.60 per annum.

13. The plaintiff alleges that he enlisted in the United States Marine Corps on May 4, 1934, and that he was honorably discharged therefrom on September 13, 1935.

14. The plaintiff alleges that effective June 29, 1947, he was reduced in his grade from P-3 Allowance Engineer to Mechanical Engineer P-2, and that reason thereof he has suffered a loss in salary.

15. The plaintiff alleges that he is an honorably discharged soldier of the United States and that he is entitled to preference in the matter of his employment, and that his demotion from P-3 Allowance Engineer to Mechanical Engineer P-2, is illegal and unlawful and in violation of the provisions of the Acts of Congress of the United States enacted on August 23, 1912, as amended on February 28, 1916, known as 5 U.S.C.A. 648, and the other Acts of Congress relating to the preferential rights of honorably discharged soldiers and sailors of the United States engaged in government civilian employment.

16. The plaintiff further alleges the fact to be that despite the preferential rights of employment as alleged in Paragraph 15 hereof, the said defendant, James Forrestal, demoted the plaintiff from P-3 Allowance Engineer to Mechanical Engineer P-2, and retained in the grade of P-3 Allowance Engineer, numerous and divers persons in the said Philadelphia Naval Shipyard, who do not have any preference in their employment, and that in so doing the defendant, James Forrestal, violated the provisions of the

Acts of Congress giving to the plaintiff his preferential rights, and the said demotion of the plaintiff is illegal and unlawful.

212 17. That there is a controversy between the plaintiff and the said defendants, Harry B. Mitchell, Frances Perkins and Arthur S. Flemming, acting as members of the Civil Service Commission, as to the plaintiff's rights under the Acts of Congress giving preferential rights to honorably discharged soldiers and sailors who are employed in government service of the United States, and whose efficiency rating is good or better. The plaintiff alleges that the said defendants, members of the Civil Service Commission of the United States, have failed, refused or neglected to accord to the plaintiff preferential employment as an honorably discharged soldier of the United States, and the said defendants, such as are members of said Civil Service Commission, have failed, refused or neglected to accord to the plaintiff any rights to preferential employment in government service given under the Veterans Preference Act of June 27, 1944.

18. That this Court in the interests of right and justice should enter a declaratory judgment fixing and determining the plaintiff's right to preferential employment under the various acts of Congress giving preference to honorably discharged soldiers or sailors in the matter of their employment by the United States where their efficiency rating is good or better.

19. That the plaintiff has no adequate, speedy remedy at law, and that unless this Court issues a preliminary mandatory injunction directed to the defendant, James Forrestal, to restore the plaintiff to the position of P-3 Allowance Engineer as of June 29, 1947, the plaintiff will suffer irreparable damage.

WHEREFORE, the plaintiff demands judgment as follows:

1. A due process of this Court issue directed to the defendants, and to each of them, commanding them to appear and answer this bill of complaint.

2. That the Court enter a preliminary mandatory judgment directed to the defendant, James Forrestal, ordering and directing him to restore the plaintiff to the position of P-3 Allowance Engineer forthwith, and that upon a final hearing that such preliminary mandatory injunction be made permanent.

213 3. That the Court order and direct the said James Forrestal, Secretary of the Navy, to pay to the plaintiff his salary commencing June 29, 1947, as a P-3 Allowance Engineer, to the day of judgment herein.

4. That the Court enter a declaratory judgment in this action against the said defendants, and each of them, fixing and determining the rights of plaintiff to preferential employment in the government of the United States as an honorably discharged soldier of the United States, finding and determining that the plaintiff is entitled to preference in government employment as an honorably discharged soldier of the United States.

5. For such other and further relief as to the Court may seem equitable and proper.

DAVID R. HUNTER,
Plaintiff.

C. L. DAWSON,

Attorney for the Plaintiff,
917 Fifteenth Street, N. W.,
Washington, D. C.

* * * * *

214 Filed Sep 8 1947

**Defendants' Motion for Summary Judgment Pursuant to
Rule 56 of the Federal Rules of Civil Procedure**

Now come the defendants, and upon the complaint on file in this Court and upon the annexed affidavits, respectfully moves the Court for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground

that there are no genuine issues as to any material facts and defendants are entitled to such judgment as a matter of law and for such other and further relief as to the Court may seem just and proper.

PEYTON FORD,
Assistant Attorney General.

GEORGE MORRIS FAY,
United States Attorney.

Attorneys for Defendant.

Of Counsel:

JOSEPH M. FRIEDMAN,
Special Assistant to the Attorney General.

* * * * *

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Affidavit

Charles R. Peck, being first duly sworn, deposes and says:

1. That he is employed by the Navy Department as Industrial Relations Assistant, Bureau of Ships; that the Philadelphia Naval Shipyard is under the cognizance of the Bureau of Ships; and that in his capacity as Industrial Relations Assistant the records of the Navy Department pertaining to civilian employees of the Bureau of Ships are under his jurisdiction and cognizance and that pursuant to his official duties he has examined and is familiar with the records of the Navy Department, Washington, D. C. pertaining to the reassignment to another position involving a change to lower grade of David R. Hunter, plaintiff in the above captioned action, from Allowance Engineer (Hull), P-3, to Mechanical Engineer, P-2, U. S. Naval Shipyard, Philadelphia, Pennsylvania, which became effective June 29, 1947, in accordance with Section 14 of the Veterans' Preference Act of 1944 (58 Stat. 390; 5 U.S.C. 863).

2. That the records of the Navy Department show
216 that the plaintiff was employed at the U. S. Naval

Shipyard, Philadelphia, Pennsylvania on November 27, 1939 as an Engineer Draftsman, SP-3; he has remained in continuous service thereafter and was advanced by subsequent promotions to the position of Allowance Engineer P-3, which he received on February 24, 1946.

3. That the records of the Navy Department show that the plaintiff served in the U. S. Marine Corps during the period from May 4, 1934 to September 13, 1935; that the plaintiff has presented no evidence of any service-connected disability; and that there is no evidence that he is receiving compensation, disability by retirement benefits, or pension by reason of public laws administered by the Veterans' Administration or the Navy Department as provided by Section 2 of the Veterans' Preference Act of 1944.

4. That in October 1946 the Bureau of Ships, having cognizance over Philadelphia Naval Shipyard, concluded a survey of Design Branch problems in all naval shipyards throughout the country and at Pearl Harbor; that the purpose of this survey was to establish uniform organizations and uniform personnel ratings, in addition to insuring a design force adequate to support the requirements of each shipyard, those of the Bureau of Ships and of the Bureau of Ordnance.

5. That as a result of the foregoing survey, the Bureau of Ships on November 13, 1946, addressed letters to all shipyard commanders, establishing "A", "B", and "C" design shipyards; that the subject of these letters was "Size and Organization of the Design Branch, Planning Department, U. S. Naval Shipyards"; that the "A" yards, which include Philadelphia, were so designated because they are the shipyards which are to maintain the largest of the Design Branches; that the "A" yards were also designated as "lead" ordnance design yards, defined as those in which design work for the Bureau of Ordnance will be assigned; that "B" design shipyards were defined as those which are to maintain a medium size Design
217 Branch, as distinct from the "A" design shipyards

(largest Design Branch) and "C" design shipyards (smallest Design Branch); that naval officer personnel complements were fixed in these letters as well as the complements for specified types of civilian positions; and that the numbers of personnel and their rank or grade were evolved, as a result of the survey, from what was arrived at as a standard "A", "B", or "C" yard.

6. That the foregoing letters of November 13, 1946 instructed the shipyards, inter alia, to reassign civilian personnel in accordance with prescribed plans, pending subsequent official action respecting the allocation of the positions in the new organization and the actual paper processing of the reassignments, some of which would involve changes to lower grade; that the yards were requested in these letters (attached to which were proposed organization charts of "A", "B" or "C" Design Branch as applicable) for specific comments on situations where the shipyard desired to obtain exception from the prescribed standards; that the Bureau of Ships requested the assistance of the Head Engineers of the shipyards in preparing position descriptions for the civilian positions in the reorganized Design Branches; and that a committee comprised of the Head Engineers from the various shipyards met in Washington, D. C. in February 1947 to assist in the goal of achieving maximum position standardization and uniformity in the reorganized Design Branches of the shipyards.

7. That the Bureau of Ships, in the interest of promoting the efficiency of the service, utilized to the utmost the service of all of the facilities to correct the unsatisfactory situation resulting from necessary staffing during the wartime period; that it was apparent prior to the reorganization that the Design Branches at the various shipyards, as a result of reductions in force and normal personnel attrition, were top-heavy in the number of personnel occupying the higher grade positions; that the conditions surrounding the wartime organization no longer existed and were

no longer applicable to peacetime conditions; that in view of this the Bureau of Ships proceeded to establish a new organization for the purpose of taking over the work
218 of the old Design Branches; that as a consequence of the establishment of a new organization it became necessary to allocate new positions; that the Bureau of Ships directed the various shipyards, including the Philadelphia Naval Shipyard, to utilize the service of all personnel in the old organization in the new organization; that due to the limitations imposed by the Bureau of Ships as to the numbers and grades of new positions in the new organization some employees were "down-graded", that is, reassigned to positions of lower grade than they occupied in the old organization; and that the plaintiff was one of those "down-graded". (from Allowance Engineer (Hull) P-3 to Mechanical Engineer P-2).

8. That, pursuant to the foregoing plan for a new reorganization, certain employees, veteran and non-veteran within the meaning of the Veterans' Preference Act of 1944, were retained at the P-3 level in preference to the plaintiff; that in connection with the determination to retain these employees at a level higher than that of the plaintiff, full consideration was given to the qualifications of the employees involved and the personnel adjustment made would not have been effected if the plaintiff were as well, or better, qualified as the employees so retained; that the sole reason motivating this personnel adjustment was that the aforesaid employees had qualifications superior to those of the plaintiff; that this personnel adjustment was based solely on "such cause as will promote the efficiency of the service" within the meaning of Section 14 of the Veterans' Preference Act of 1944; and that no reductions in force were involved in the Design Branch reorganization, with the consequence that regulations pertaining to retention points and reductions in force were not applicable.

9. That the plaintiff has been accorded full procedural rights and safeguards contemplated by the Veterans' Preference Act of 1944, specifically Section 14 thereof, in that, by letter dated 28 April 1947, copy attached hereto and made a part hereof as exhibit (a), the plaintiff was, by direction of the Commander, Philadelphia Naval Shipyard, given in excess of thirty days' advance written notice of the proposed change in grade (effective June 29, 1947), which letter stated specifically and in detail the reasons for the proposed action and allowed the plaintiff a reasonable time (five days) for answering the same personally and in writing.

CHARLES R. PECK.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 3rd day of September, 1947.

AGNES M. GALLAGHER,
Notary Public.

My Commission expires August 31, 1948.

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PHILADELPHIA NAVAL SHIPYARD
NAVAL BASE STATION
PHILADELPHIA 12, PA.

29 April 1947

To: David R. Hunter, Allowance Engr., (Hull), P-3,
\$4400.40 p.a.

Via: Design Supt.

Subj: **Notice of Change to Lower Grade Because of
Reorganization.**

1. The Bureau of Ships has required the reorganization of the Design Branch, Planning Department, Philadelphia Naval Shipyard, in order to establish uniform organizations and uniform grade levels as between yards, in addition to insuring a design force, country-wide, adequate to

discharge the Navy's over-all responsibilities and mission in regard to design work.

2. To accomplish this reorganization, it has been found necessary to effect your change to lower grade, effective 29 June 1947, to the position of Mechanical Engineer, P-2, \$4149.60 per annum, Allowance Section. This action has been determined to be necessary to promote the efficiency of the service, and is taken after a careful consideration (1) of your qualifications in comparison with the qualifications of all other employees in the Design Branch, and (2) of the qualification requirements of all positions of the same or higher grade established in the Design Branch, as reorganized pursuant to enclosure 1.

3. The reorganization of the Design Branch, which makes your change to lower grade necessary, does not involve a reduction in force. Regulations governing reduction in force are, therefore, not applicable to personnel actions taken in connection with or because of this reorganization.

4. You may, after consultation with your supervisor, take such leave as may be practicable before your change to lower grade becomes effective.

By direction of the Commander.

E. H. SCHANTZ,
Industrial Relations Officer.

Encl. 1

BuShips ltr NY/A3-1(740)

EN28/A2-11, 12 Mar. 1947.

Personally appeared before me, a Notary Public in and for the county of Philadelphia, State of Pennsylvania, Frank A. Robey, Jr., who states that the above is a true and accurate copy of the Notice of Change to Lower Grade because of Reorganization as it appears in the official personnel record of David R. Hunter.

FRANK A. ROBEY, JR.,
Personnel Assistant,
Philadelphia Naval Shipyard.

Subscribed and sworn to before me this 3rd day of September, 1947.

CHARLES D. GANTS,
Notary Public.

My Commission expires January 2, 1949.

221 COMMONWEALTH OF PENNSYLVANIA, COUNTY OF PHILADELPHIA, SS:

I, **William A. Brady**, Acting Regional Director, Third U. S. Civil Service Region, Room 305, Custom House Building, 2nd and Chestnut Streets, Philadelphia 6, Pa., being first duly sworn, do depose and state:

That, the records of this office disclose that Mr. David R. Hunter, 124 Drexel Court Apartments, Drexel Hill, Pa., filed appeal on May 1, 1947, under Section 14 of the Veterans' Preference Act of 1944, from the action of the Philadelphia Naval Shipyard, Philadelphia, Pa., in proposing his reduction in grade, effective June 29, 1947, from the position of Allowance Engineer, P-3, \$4400.40 per annum, to that of Mechanical Engineer, P-2, \$4149.60 per annum, Allowance Section.

In filing this appeal, Mr. Hunter contended that the proposed demotion was "not compatible with the military preference rights of the subject employee", claiming that such action violated the following laws and regulations:

(1) An act of Congress dated August 23, 1912 (37 Stat. 413)

(2) Sections 12 and 18, Public Law 359 (Veterans' Preference Act)

(3) Section 5, Rule XII, of the old Civil Service Act and Rules

Mr. Hunter's letter of appeal contained the following additional information:

"The Personnel Chart for the Allowance Section, as approved by the Bureau of Ships, shows there will be one (1) P-6 in charge of the section, two (2) P-5s, four (4) P-3s

and one (1) P-2 (these last two rates to be Squad Leaders), and the lower rates of Sp-8, SP-7, etc. Of the men retained in the P-3 rates, there is not one who has military preference. Along with my military preference, I have twelve (12) retention credits and an efficiency rating of 'Very Good', which I have maintained since starting employment in this agency on November 27, 1939."

Mr. Hunter submitted with his appeal, as evidence of his right to appeal under Section 14 of the Veterans' Preference Act, a photostatic copy of a certificate of Honorable Discharge from the United States Marine Corps, indicating that David Randolph Hunter, a private of the U. S. Marine Corps, who was enlisted at Philadelphia, Pa., on May 4, 1934, was honorably discharged on September 13, 1935. The aforesaid Certificate of Honorable Discharge indicated that Mr. Hunter had not participated in any battles, engagements, skirmishes or expeditions, and had not seen sea service or foreign service.

By letter of May 6, 1947, File R3:A:LFC:FTR, this office advised Mr. Hunter that "the Commission has held that demotion of employees who have not been reached and given a notice of separation in a reduction in force are not reductions in force but are purely administrative actions and are not, therefore, appealable to the Civil Service Commission under the Retention Preference Regulations."

222 The letter continued by advising Mr. Hunter that a reduction in compensation would be appealable under Section 14 of the Veterans' Preference Act of 1944, provided that the employee affected submitted evidence of his entitlement to appeal under that Act. The letter then pointed out that Mr. Hunter's service in the Armed Forces from May 4, 1934 to September 13, 1935, without award of a campaign badge, did not entitle him to appeal under the Act and this office therefore could not entertain such appeal.

This office subsequently received a carbon copy of a letter addressed to the appellant on June 25, 1947, File

BAR:JFE:GD, under the signature of Arthur S. Fleming, Commissioner, U. S. Civil Service Commission, Washington 25, D. C. This letter indicated that Mr. Hunter had, on May 20, 1947, appealed the decision of the Third Regional Office to the Commission and that the matter had been referred to the Board of Appeals and Review for consideration. The Board of Appeals and Review had upheld the decision of the Third Regional Office to the effect that Mr. Hunter's demotion was brought about as a result of the reorganization of his office and that his peace-time military service, from May 4, 1934 to September 13, 1935, did not confer any title to appeal from this demotion under Section 14 of the Veterans' Preference Act of 1944. The letter, in supporting this decision, included the following information:

"The Attorney General of the United States in an opinion of October 16, 1945, held in effect that a peace-time veteran is not entitled to the benefits of Section 14 of the Veterans' Preference Act of 1944 unless he has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension by reason of Public Laws administered by the Veterans Administration, the War Department, or the Navy Department, as provided in Section 2 of the Act. There is no showing in the record that you meet these conditions or that during your military service you engaged in any campaign or expedition for which a campaign badge has been authorized."

This office has taken no further action in the case of Mr. Hunter.

I have read the foregoing statement, consisting of two pages, each of which I have initialed or signed. I fully understand said statement and the same is true and complete to the best of my knowledge and belief and is made

of my own free will without any threat, promise or inducement.

/s/ WILLIAM A. BRADY,
Acting Regional Director.

Subscribed and sworn to before me at Philadelphia, Pa.
This day of August 28, 1947.

CHARLES S. FRANCIS,
Notary Public.

My Commission expires January 24, 1949.

* * * * *

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Filed Oct 30 1947

Affidavit

STATE OF PENNSYLVANIA, COUNTY OF PHILADELPHIA, ss:

David R. Hunter, being first duly sworn upon his oath deposes and says that he is the plaintiff in the above entitled cause, and that he makes this affidavit in opposition to the motion for a summary judgment filed by the defendants in this cause; That among the questions of fact arising from the issues involved in this cause is whether the plaintiff's reduction in grade and salary arose from a reduction in force or of personnel in the Naval Shipyard at Philadelphia; That the issues concerning the reduction in force or personnel cannot be decided upon the affidavits filed by the defendants or the counter affidavits of the plaintiff, and that all of the witnesses should be required to appear in court and be subject to cross examination, and that the affiant expects to prove that any so-called reorganization plan of the design branch of the Philadelphia Naval Shipyard was merely a plan whereby the officials under the jurisdiction of the defendants attempt to evade the provisions of the Veterans Preference Acts giving preference to the plaintiff, and others in like situation, and to circumvent the provisions of said Acts giving preference to honorably discharged soldiers and sailors, and that the affiant

is informed and believes, and therefore alleges as a fact that since the year 1945, and continuously to date there has been a constant reduction in force and personnel in the Naval Shipyard at Philadelphia, and that in fact, 224 there has been a reduction in personnel and force in said Naval Shipyard from a total number of 42,000 employees in the year 1945 to a total number of 9,200 employees at the present time, and that the reductions in force and personnel include employees in the design branch of the Naval Shipyard where this affiant is employed; That the true facts in this regard cannot be fully ascertained without a trial of the issues, and that the affiant will show by competent evidence at any such trial that any so-called reorganization of the personnel of the said Naval Shipyard is the direct and approximate result of the reduction in force or personnel, and solely responsible for any so-called reorganization plan.

Affiant further says that the affidavits filed by the defendants contain no facts as to the reduction in force or personnel except conclusions of the affiants, and that there are issues of fact involved in this cause which can only be properly determined by a trial of the issues before the Court.

DAVID R. HUNTER.

Subscribed and sworn to before me this 29th day of October, 1947.

P. CHAS. DE RITA,
*Notary Public, in and for the
 County of Philadelphia, State
 of Pennsylvania.*

My Commission expires January 27, 1949.

* * * * *

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Filed Apr 30 1948

Order

Upon consideration of the motion of defendants for summary judgment, the affidavits and points and authorities in support thereof, upon argument of counsel in open court and upon all the proceedings herein, and the Court being fully advised in the premises, it is, by the Court this 30th day of April, 1948,

ORDERED, ADJUDGED and DECREED that, the motion of defendants for summary judgment be, and the same hereby is, granted.

By the Court:

F. DICKINSON LETTS,
Justice.

Approved as to Form:

C. L. DAWSON,
Attorney for Plaintiff.

JOSEPH M. FRIEDMAN,
*Special Assistant to the Attorney General,
Attorney for Defendants.*

* * * * *

BRIEF FOR APPELLEES AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 9994

DAVID R. HUNTER, APPELLANT

v.

HARRY B. MITCHELL, PRESIDENT, CIVIL SERVICE COMMISSION,
ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

*United States Court of Appeals
for the District of Columbia*
Chief

FILED OCT 6 1949

H. G. MORISON,
Assistant Attorney General.

GEORGE MORRIS FAY,
United States Attorney.

CLERK
EDWARD H. HICKEY,
Special Assistant to the Attorney General.

Of Counsel:

EUGENE T. MAHER,
Attorney, Department of Justice.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 9994

DAVID R. HUNTER, APPELLANT

v.

HARRY B. MITCHELL, PRESIDENT,
CIVIL SERVICE COMMISSION, ET AL.,

APPELLEES

STATEMENT OF THE CASE

Appellant is a veteran solely by virtue of service with the Marine Corps during the peacetime years of 1934 and 1935 (App. 79). He never served during any war or in any campaign or expedition for which a campaign badge has been authorized. Appellant has been continuously employed in the Philadelphia Naval Shipyard since November 1939, and his efficiency rating has been good or better throughout that period and to date. On June 29, 1947, appellant, then employed in the Design Branch in the Philadelphia Naval Shipyard, was demoted from the position of Engineer (Hull), P-3, to the position of Mechanical Engineer, P-2. (App. 72) Certain non-veteran employees in the Design Branch were continued in the grade of P-3 without similar demotions. It is the latter fact of which appellant complains.

Appellant's demotion was effected in the course of a reorganization of the Design Branch in the Philadelphia Naval Shipyard. (App. 73) In 1946, the Bureau of Ships, Department of the Navy, conducted a survey of the Design Branch in the Philadelphia Naval Shipyard, one of the

distinctive organizational and functional units within the shipyard (Shantz 49).¹ This was part of a general survey of similar branches in all the naval shipyards in the country and Pearl Harbor (App. 73). As a result of the general survey, the shipyards were classified into three categories, as "A", "B" and "C" shipyards for design purposes (App. 73). The Philadelphia Naval Shipyard, a yard maintaining one of the largest design branches, fell into the first, or "A" category. (App. 73).

An objective of the survey, and one of its results, was the reorganization of the design work in the naval shipyards, and the formulation of a set of standard personnel organizations for the design branch in the "A" shipyards. Pursuant thereto a plan of personnel organization of the Design Branch in the Philadelphia Naval Shipyard was put in effect there on June 29, 1947 (Shanz 70).

This plan involved a thoroughgoing change in the assignment of duties and functions to the personnel in the branch. The personnel then employed in the branch on that date were assigned to the newly created jobs in accordance with their individual capacities and qualifications, as determined by the authorities in charge. On the basis of the comparative qualifications of appellant Hunter and other employees in the design branch, Hunter was assigned to the position of Mechanical Engineer, P-2, while others, including non-veterans, were assigned to other positions with the Grade P-3.

Appellant appealed to the Civil Service Commission from the demotion action on the ground that his demotion, while non-veterans were not demoted, was a violation of his right to military preference in a reduction in force under the provisions of Section 4 of the Act of August 23, 1912 (37 Stat. 413), Sections 12 and 18 of the Veterans Preference Act of 1944, and Section 5 of Civil Service Commission Rule XII (App. 78). By decision dated May 6, 1947, the Director of the Commission's Third Region denied the appeal. The Commission in Washington, D. C.,

¹ Three record references are used herein: Appellant's Appendix, cited as "App."; Appellees' Appendix, cited as such; and the deposition of Schantz which was filed in typewritten form, cited as "Schantz."

by decision dated June 25, 1947, affirmed the Regional Director's denial of the appeal (App. 79) for the reasons that:

- (a) The demotion action was not a reduction in force; and
- (b) Hunter, as a veteran of peacetime service, did not have the right to appeal from a demotion which is conferred by Section 14 of the Veterans Preference Act of 1944.

On July 7, 1947, appellant filed this action in the District Court for the District of Columbia, naming as defendants James V. Forrestal, then the Secretary of the Navy, and the members of the United States Civil Service Commission. The relief sought was a declaratory judgment determining appellant's rights to preferential employment as a veteran, and a mandatory injunction directing appellant's restoration to the position from which he had been demoted, and a judgment for the amount of his salary at his former grade from the time of his demotion. On the same date, three other veteran employees of the Philadelphia Naval Shipyard, Whipple, Miller and Reynolds, in situations similar to appellant Hunter's, filed similar actions against Secretary Forrestal. The cases were consolidated for argument by the District Court, which, by orders dated April 30, 1948, granted defendants' motions for summary judgment in each case (App. 20, 41, 66, 83). Plaintiffs appealed from these orders, and the four cases were consolidated for disposition by this Court.

By orders dated and filed January 27, 1949, this Court, upon the suggestion of appellees, dismissed as abated the appeals in the Miller, Whipple and Reynolds cases (Nos. 9991, 9992, and 9993), because appellants had failed to make timely substitution of the successor of Forrestal as Secretary of the Navy. The Court's order of January 27, 1949, similarly dismissed, as abated, the appeal in this case (No. 9994) as to appellee Forrestal, leaving only the members of the Civil Service Commission as appellees.

**STATUTES, EXECUTIVE ORDERS AND REGULATIONS
INVOLVED**

The applicable statutes are printed in appellant's brief. The provisions of the Civil Service Commission 1943 Regulations, Sections 12.301 through 12.313, inclusive, are printed in the Appendix hereto.

SUMMARY OF ARGUMENT

Only two statutes conferring veteran's preference on Federal employees are or could be claimed to be involved in this action. The first is Section 4 of the Act of August 23, 1912, (33 Stat. 413), and the second is the Veterans Preference Act of 1944 (5 U.S.C. Secs. 851 et seq.). The first applies in terms only " . . . in the event of reductions being made in the force in any of the executive departments . . . ". The rights conferred under the second, the Veterans Preference Act of 1944, apply only to disabled veterans, the wives and widows of certain other veterans, and to veterans of wartime service or those who served in the armed forces in any campaign or expedition. (5 U.S.C. Sec. 851). Appellant, a veteran of peacetime service in the Marine Corps is thus not entitled to the preferences and rights conferred by the 1944 statute. Section 18 of the 1944 statute (5 U.S.C. Sec. 867), it is true, expressly preserves the rights granted under any earlier statute or regulation, including, therefore, those granted under the 1912 enactment. Thus, appellant's rights depend solely on the Act of August 23, 1912, which, as noted, are exclusively limited to " . . . reductions . . . in the force." Such has been the construction placed upon the statute by the Civil Service Commission with the knowledge and approval of Congress.

Appellant's demotion and the reorganization pursuant to which it was effected were not accompanied by any reduction in force. Appellant's demotion therefore did not violate any rights to preferential employment conferred by the Act of August 23, 1912.

It should be emphasized that even wartime veterans entitled to preference under the Veterans Preference Act

of 1944, are not entitled to preference against demotion as distinguished from discharge in a reduction in force, but that statute, in Section 14, (5 U.S.C. Sec. 863) specifically grants authority to employing agencies to so demote veterans entitled to the preferences thereunder. Thus, appellant, a veteran only of peacetime service without physical disability is seeking to establish a preference far greater than Congress, legislating during wartime, granted even to disabled veterans.

ARGUMENT

POINT I

Appellant was not entitled to appeal his demotion to the United States Civil Service Commission under the provisions of Section 14 of the Veterans Preference Act of 1944

In Section 14, the Veterans Preference Act of 1944 extends to those veterans defined in Section 2 of that statute certain rights in the case of demotions. Section 14 limits the grounds for which a motion may be made and extends to veterans within its coverage the right to a written notice of demotion, containing a statement of the reasons therefor, and the right to appeal therefrom to the Civil Service Commission. Section 14 (5 U.S.C. Sec. 863) provides, in pertinent part, as follows:

Discharge, suspension, etc., only for cause; reason in writing; advance notice; personal appearance; findings and recommendations.

No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to, shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such causes will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or

reduction in rank in compensation is sought shall have at least thirty days advance written notice (except when there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons specifically and in detail for such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answers, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: . . .

It may be conceded that the procedure by which appellant was demoted did not comply with the requirements above set forth to the extent that his appeal therefrom was denied by appellees. Appellant, however, is a veteran of peacetime service in the Marine Corps (App. 79), and as such does not come within the coverage of Section 14, and is, hence, not entitled to the rights and preferences thereby established. Section 14 of the 1944 act applies only to veterans as defined by Section 2 of that Statute. By the terms of Section 2 (5 U.S.C. Sec. 851) the rights and preferences established by the Act are applicable only to certain classes of veterans, not including veterans such as appellant, who served in the armed forces during peacetime. Section 2 provides, in pertinent part, as follows:

Persons entitled to Federal employment preferences.

. . . Preference shall be given to (1) those ex-service men and women who have served on active duty in any branch of the armed forces of the United States and have been separated therefrom under honorable conditions and who have established the present existence of a service-connected disability or who are receiving compensation, disability or retirement benefits, or pension by reason of public laws administered by the Veterans Administration, the Department of the Army or the Navy Department; (2) the wives of such service-

connected disabled ex-servicemen as have themselves been unable to qualify for any Civil Service appointments; (3) the unmarried widows of ex-servicemen who served in active duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and who were separated therefrom under honorable conditions; and (4) those ex-servicemen and women who had served on active duty in any branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and have been separated therefrom under honorable conditions; (5) widowed mothers (if they have not remarried)

(A) Of deceased ex-servicemen or ex-servicewomen who lost their lives while on active duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), or

(B) of service-connected permanently and toally disabled ex-servicemen or ex-servicewomen,

if said ex-serviceman or ex-servicewoman was separated from such armed forces under honorable conditions; and (6) a mother of a deceased ex-serviceman or ex-servicewoman who lost his life or her life while on active duty in any branch of the armed forces of the United States during any war, or any campaign or expedition (for which a campaign badge has been authorized), or of a service-connected permanently or totally disabled ex-serviceman or ex-servicewoman, if (A) said ex-serviceman or ex-servicewoman was separated from such armed forces under honorable conditions, (B) if the mother was divorced or separated from the father of said ex-serviceman's son or ex-servicewoman's daughter and (C) the mother has not remarried.

The language of Section 2 is too clear for argument. The Attorney General accordingly has ruled that veterans of peacetime service in the armed forces who do not otherwise qualify within one of the categories established by Section 2, above, are not entitled to the right to appeal to the Civil Service Commission which is conferred by Section 14 of the Veterans Preference Act of 1944. 40 Op. Atty. Gen. 425, 430.

Indeed, appellant, as a veteran of peacetime service in the armed forces, is now entitled to any preference whatever in Federal employment solely by virtue of the operation of Section 18 of the Veterans Preference Act of 1944. Section 18 (5 U.S.C. Sec. 867) provides, in pertinent part as follows:

Repeal of inconsistent laws; saving clause.

All acts and parts of acts inconsistent with the provisions hereof are hereby modified to conform herewith and this chapter shall not be construed to take away from any preference eligible any rights heretofor granted to, or possessed by, him under any existing law, executive order, Civil Service rule or regulation, of any department of the government or officer thereof.

This section does not purport to extend the benefits of the other sections of that statute to peacetime veterans, but merely has the effect of preserving the rights and preferences established for the benefit of such veterans by such statutes and regulations as were in effect at the time of the adoption of the Veterans Preference Act of 1944, June 27, 1944. See *Mitchell v. Cohen*, 333 U.S. 411, 423.

POINT II

Appellant's demotion did not violate the preferences granted veterans by Section 4 of the Act of August 23, 1912

The veterans preference provision of Section 4 of the act of August 23, 1912, reads:

In the event of reductions being made in the force in any of the executive departments, no honorably discharged soldier or sailor whose record in said depart-

ment is rated good shall be discharged or dropped or reduced in rank or salary.¹

Appellant's demotion did not violate any right to veterans preference conferred by the above statute. Appellant, to be sure, is a veteran with an efficiency rating of good or better within the meaning of this statute. Appellant's demotion was not effected in the course of any reduction in force, however, and the statute is therefore inapplicable. The undisputed evidence establishes that the last reduction in force in the Design Branch in the Philadelphia Naval Shipyard was completed in January, 1947, and that the reorganization in that Branch pursuant to which appellant was demoted was effected on June 29, 1947, and had, in fact, nothing whatever to do with the reductions in force.

Commander Shantz, Industrial Relations Officer for the Shipyard, after testifying as to the number and details of the several reductions in force that occurred in the Design Branch in the Philadelphia Shipyard, makes clear that the last such reduction in force was effected in January, 1947. His testimony is as follows (Shantz, 60-63):

Q. Were there any further reductions in force?

A. Yes, sir. There was one further reduction in force, the notices of which were sent out during the month of November 1946, to be effective in January, 1947.

Q. Would you give the breakdown on that please, Commander?

A. The breakdown is as follows:

P-4

Nav. Arch.	1
Elec. Eng.	1

¹ This statutory language was first enacted as a proviso to Sec. 4 of the Act of August 23, 1912 (37 Stat. 413). This section, which was a rider on a legislative, executive and judicial appropriation act, established a system of efficiency ratings for Civil Service employees in the District of Columbia. By the Act of February 28, 1916 (37 Stat. 315), Section 4 of the Act of August 23, 1912, was amended to constitute a Bureau of Efficiency, nothing in the amendment affecting the veterans preference proviso. This statute, as amended, is the version which appeared as Sec. 648 of Title 5 U.S.C., until by Sec. 17 of the Act of March 3, 1933 (47 Stat. 1519), the Bureau of Efficiency was abolished. Sec. 648 of Title 5, containing this proviso, is no longer carried as part of the current United States Code (See 1949 Pocket Part, Title 5, U.S.C. Sec. 648).

P-3

Nav. Arch.	1
Mar. Engr.	2
Mech. Engr.	2
Elec. Eng.	1

SP-8

Eng. Dftmn. Elec.	1
-------------------	---

SP-7

Eng. Dftmn.	1 (veteran)
-------------	-------------

Giving a total of 10 technical and 2 clerical.

Q. On that last one, the SP-7, do you know whether the veteran was working at the time?

A. The veteran was on furlough to pursue a course of study under the G.I. Bill of Rights. He was reached for reduction in force, so he was transferred technically from furlough for educational purposes to furlough for one year on the rolls.

Q. Did I understand you, Commander, to say that this was the last reduction in force?

A. That was it.

Q. Accomplished in the Design Branch?

A. That is correct, sir. There have been no subsequent reductions in force.

Q. Can you give me now what the distribution of jobs in the technical staff of the Design Branch was following this final reduction in force?

A. Following the final reduction in force it was as follows:

	Non-veteran	Veteran
SP-3		1
SP-4		3
SP-5		4
SP-6		9
SP-7		14
SP-8		10
P-1		1
P-2		3

P-3	16	27
P-4	62	17
P-5	33	7
P-6	12	1
P-7	1	
	—	—
Leaving a total of	124	97

Q. Just so the record will be very clear, Commander, I wish you would repeat for me the answer to the question as to when the last reduction in force took place; first, when the notices were sent out to the men; and secondly, when those notices became effective.

A. The notices were sent some time during the month of November to become effective in January. The Shipyard adopted the general policy of not having any notices become effective during the month of December because they didn't want anybody to have a Christmas present of walking the streets; therefore, the notices were made effective in January.

Q. And there were no further reductions in force; is that correct?

A. There were no further reductions in force, that is correct.

Q. Did I understand you correctly when you gave the last statement of the distribution following the last reduction in force; I believe you said there was a total of 221 employees in the technical staff?

A. That is correct.

Q. Did I understand you correctly when you gave the last statement of the distribution following the last reduction of force: I believe you said there was a total of 221 employees in the technical staff?

A. That is correct.

Q. What is the total number of employees today?

A. 218; the difference being caused by voluntary separations.

Q. So that the numbers are substantially the same?

A. That's right.

Q. Commander, earlier under questioning by Mr. Dawson, you gave three reasons why reductions in force took place throughout the Naval Shipyard. Are those three reasons applicable to the reductions that you have just given us in the Design Branch?

A. They are.

Q. What are those three reasons?

A. Limitation of funds, limitation caused by personnel ceiling, and lack of extra work.

Q. Are either or any one of these reasons or a combination of these reasons, the reason why the reductions in force that you have been just telling about took place?

A. That is correct.

Thus, in the subsequent reorganization in June, 1947 no personnel were discharged nor was there any limitation of funds or other causes for such a discharge. Commander Shanz testified (Shanz p-73):

Q. Commander, was the plaintiff in each of these four cases we are talking about here downgraded as a result of this reorganization that took place?

A. They were, sir.

Q. Did any of the three reasons for which you said reductions in force took place throughout the naval shipyard at other times had anything to do with the downgrading of these four plaintiffs?

A. No sir.

Q. Did the reorganization plan as put into effect require or cause any reduction in the number of the personnel in the Design Branch?

A. It did not.

Q. Were any personnel reduced as the result of this reorganization?

A. No personnel were reduced as the result of the reorganization.

As the reorganization was not accompanied by the separation from the service of any personnel, as noted above, the 1912 Act is inapplicable. That statute applies in terms only where there are such separations, as there can be no reduction in force absent such separations. Such has been the construction placed on the statute by the Civil Service Commission, and indeed by the Congress itself.

The first comprehensive regulations applying the 1912 Statute were published by the Civil Service Commission in 1943 (5 C.F.R. 1943 Supp. Secs. 12.301 et seq. pp. 72-76). These regulations were issued under the authority of the Executive Order 9063, February 16, 1942 (7 Fed. Reg. 1075), by which, for the first time, the Commission was given power to enforce regulations with respect to retention in Government service. In pertinent part, these regulations (Appellee's appendix 15) provide:

Section 12.301. The following *reduction in force* procedure is promulgated for use whenever one or more employees in positions within the jurisdiction of the Commission are to be involuntary separated or furloughed in excess of ninety days as a result of decrease or stoppage of work or funds, change in working conditions, abolition of positions, consolidation or reorganization of functions or organization structure, or upon orders of the Bureau of the Budget. (Under-scoring supplied)

It will be noted that these regulations define a reduction in force for the purposes of the operation of the statute and regulation as involving only cases where employees are either (a) "... to be involuntarily separated ...", or (b) "... furloughed in excess of ninety days ...". The record makes it incontestably clear that the reorganization pursuant to which appellant was demoted did not involve either of these actions. See Schanz testimony *supra*.

Further, it is significant that Congress, in enacting the Veterans Preference Act of 1944, specifically for the benefit of veterans of wartime service, and disabled veterans,

and the wives and widows of each under certain conditions, conferred on such veterans an absolute preference (such as that sought to be established by appellant here) only as regards dismissals in a *reduction in force*. That act specifically authorizes the demotion of the veterans to whom it is applicable by Section 14 (5 U.S.C. Sec. 863) upon the basis and with the procedure thereby established. It is therefore clear that appellant, a peacetime veteran, seeks a preference far greater than that established by Congress for the veterans of wartime service, and disabled veterans, and their wives and widows. This claim, it is submitted, must be summarily rejected.

CONCLUSION

For the foregoing reasons, the Judgment of the District Court must be affirmed.

Respectfully submitted,

H. GRAHAM MORISON,
Assistant Attorney General

GEORGE MORRIS FAY,
United States Attorney

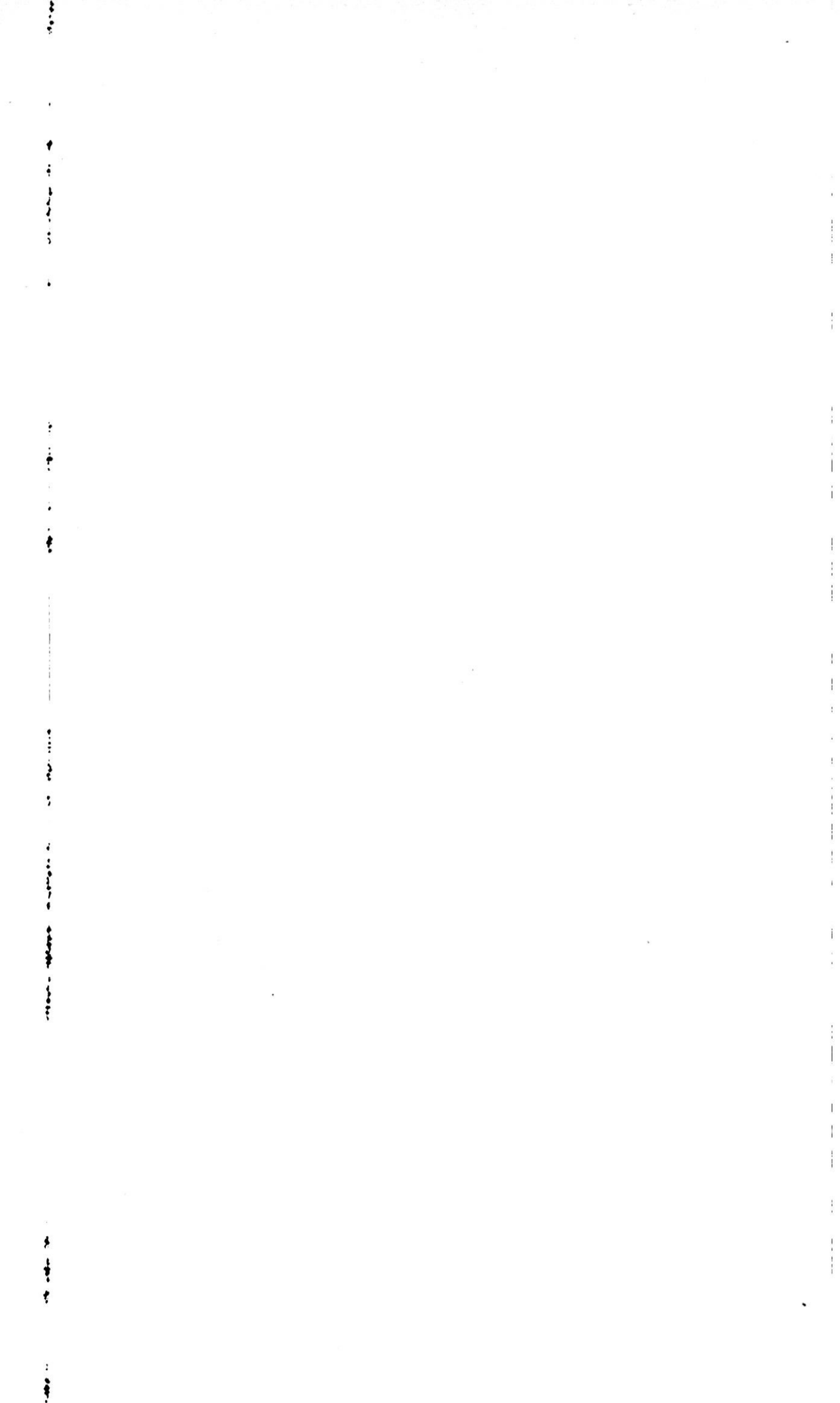
EDWARD H. HICKEY,
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APPENDIX

**REDUCTION IN FORCE REGULATIONS, UNITED STATES CIVIL
SERVICE COMMISSION**



REDUCTIONS IN FORCE

AUTHORITY: §§ 12.301 to 12.313, inclusive, issued under 22 Stat. 403, as amended, 5 U.S.C. 633; E.O. 9063, 3 CFR, Cum. Supp.

SOURCE: §§ 12.301 to 12.313, inclusive, contained in Regulation, Civil Service Commission, July 31, 1943, 8 F.R. 10921.

§ 12.301 *Coverage.* The following reduction in force procedure is promulgated for use whenever one or more employees in positions within the jurisdiction of the Commission are to be involuntarily separated or furloughed in excess of 90 days as a result of decrease or stoppage of work or funds, change in working conditions, abolition of positions, consolidation or reorganization of functions or organization structure, or upon orders of the Bureau of the Budget.

§ 12.302 *Transfers.* Whenever a department or agency in the executive branch of the government service finds that a reduction in force is necessary, the Commission shall be notified in writing immediately. Heads of departments and agencies in Washington, D. C., and vicinity shall notify the Commission's central office in Washington, D. C., of all anticipated reductions in force, departmental and field, specifying the locations where they are to be made and the probable number at each location. Heads of agencies and activities outside of Washington, D. C., and vicinity shall report anticipated reductions to the appropriate regional offices of the Commission. Representatives of the Commission will thereupon work with designated representatives of the department or agency concerned in transferring employees who are declared available to other departments and agencies whenever their services are needed and they can be effectively utilized by other departments or agencies.

Except where a reduction in force involves all employees in all classes in an organizational unit designated as a separate group for reduction in force purposes, departments and agencies shall proceed with the reduction in force procedures prescribed in the following paragraphs simultaneously with the transfer activity.

§ 12.303 *Organization unit and class.* The head of each department or establishment shall determine the organiza-

tion units and classes in which the contemplated reduction in force is to be made. Organization units designated as separate groups for reduction in force purposes shall be materially distinct from each other in work functions or in geographical location and shall be organized and operated as separate entities with clearly separable staffs of employees. Ordinarily, organization units located within the same local commuting area shall not be considered to be materially distinct from each other in geographical location. The organization unit designated as a separate group for reduction in force purposes shall be as large and have as wide coverage as is administratively feasible. Consideration shall be given to making organization units correspond with the organizational jurisdiction of efficiency rating committees. Within the determined organization unit, the class in which the contemplated reduction in force is to be made shall include all positions allocated to the same class, service, and grade, and all positions of the same grade (although designated by another title) that are sufficiently alike that intertransfer of personnel is feasible. In ungraded positions, the class shall include all positions in an occupational level.

§ 12:304 *Categories of tenure.* Within the organization unit and class, the following categories of tenure constitute separate groups for reduction in force purposes, consideration being given to the categories in the following order:

(a) All employees serving under temporary appointment limited to a specific period of time of one year or less.

(b) All employees serving probational or trial periods in their present positions, not including those who served previously with a classified (competitive) civil service status.

(c) All employees who have completed probational or trial periods or an equivalent thereof but who do not have a classified (competitive) civil service status. (Until required appointment forms have been submitted to the Commission, employees who have completed probational periods shall not be considered as having a civil service status. The fact that the character investigation has not been completed will not prevent considering the probational period to be completed for status purposes if all other requirements have been met.)

(d) All employees serving under any type of appointment, except temporary, who have classified (competitive)

civil service status in their present positions or who served previously with a classified (competitive) civil service status. (When there is doubt as to the civil service status of an employee, the Commission should be consulted.)

An employee in a lower category of tenure may be retained in preference to an employee in a higher category of tenure if the position is to be retained and its duties cannot be acceptably performed after a reasonable preliminary training period by any available employee who would be affected by reason of the retention.

Seasonal employees shall be considered in competition only with other seasonal employees in the same class of work. Reduction in force within this group shall be effected in the order of the categories of tenure.

Temporary employees and probation or trial period employees may be considered according to regulations controlling their appointment and status without regard to reduction in force procedures at the discretion of the head of the department or agency: *Provided*, that employees in the other categories of tenure are not affected thereby.

§12.305 *Order within category of tenure.* With respect to employees whose performance is evaluated under an efficiency rating system, the order of reduction in force within each category of tenure shall be:

(a) Employees without military preference who have "Fair" efficiency ratings, in order of reduction credits.

(b) Employees with military preference who have "Fair" efficiency ratings, in order of reduction credits.

(c) Employees without military preference who have efficiency ratings of "Good" or better, in order of reduction credits.

(d) Employees with military preference who have efficiency rating of "Good" or better, in order of reduction credits.

Reduction credits shall be computed by giving a numerical value of 80 for a "Good" efficiency rating, 88 for a "Very Good" efficiency rating, and 96 for an "Excellent" efficiency rating, and adding one credit for each full year of service with the Federal government. No numerical value shall be given for a "Fair" efficiency rating, but one reduction credit shall be given for each full year of service with the Federal government.

With respect to all employees whose performance must be evaluated under the uniform efficiency rating system approved by the Commission, the current efficiency rating shall be used. In the event an employee does not have a current efficiency rating based on performance in a position of the class in which reduction in force is being made and the reduction of force does not affect all employees in the category of tenure in which he falls, such employees shall be given a special efficiency rating in accordance with the regular procedure and his order in the reduction in force shall be determined accordingly. Such cases will be particularly noted in the reduction in force list by placing after their names in the remarks column the words "Special rating" followed by a statement of the number of days of service on which the rating is based.

With respect to employees whose performance is not required to be evaluated under a uniform system of efficiency ratings approved by the commission but who are rated under an efficiency rating system approved by administrative authority, the foregoing rules shall be applied in so far as they are applicable. Reduction credits shall be given and the order of separation determined on the basis of ratings construed under the following efficiency rating definitions:

"Fair"—performance that conforms generally to that reasonably required with certain deficient performance not compensated by other outstanding performance.

"Good"—performance that conforms generally to that reasonably required with deficient performance in any phase compensated by outstanding performance in other phases.

"Very Good"—performance that is distinctly better than that reasonably required in most of the especially important phases provided no deficient performance is present in any phase.

"Excellent"—performance that is distinctly better than that reasonably required in all especially important phases provided no deficient performance is present in any phase.

Where there is no efficiency rating system in general use, or where the efficiency rating system cannot be adapted to the efficiency rating adjectives as defined above, separations in each category of tenure shall be determined on the basis of military preference and reduction credits, one credit for

each full year of service with the Federal government, those with the lowest number of reduction credits in the nonmilitary preference group to be selected first for separation.

An employee may be retained in preference to another employee who is higher in the order of reduction of force if the position is to be retained and its duties cannot be acceptably performed after a reasonable preliminary training period by any available employee who would be affected by reason of the retention.

No credits shall be allowed for dependency, official conduct, or like factors; but they shall be considered when two or more employees are tied for position in the order of reduction in force and one or more but not all employees so tied for position are to be affected.

§ 12.306 *Military preference.* It is incumbent upon the official charged with making a reduction in force to ascertain which among the employees affected are entitled to military preference. Such employees as are entitled to military preference but who have not furnished the necessary proof should be given opportunity to establish their claim to military preference before the reduction in force takes place.

§ 12.307 *Length of service.* Only full years of service shall be considered in the ultimate total; fractions of a year are to be counted in the periods of service that add up to the total service. The length of service shall be the total of all periods of service that are eligible for consideration for retirement purposes, without regard to whether the employee is or will be eligible to receive retirement benefits.

§ 12.308 *Preparation of reduction in force list.* The reduction in force list will be prepared in triplicate on any convenient form and will list employees in each organization unit and class in which the reduction in force is to be made (1) in accordance with the categories of tenure, and (2) in the order in which selections are to be made. The highest category of tenure shall be at the head of the list and names shall be so arranged that those first to be selected for action shall be at the bottom of the list.

The reduction in force list need give complete information only for all employees in the highest category of tenure affected. For all employees in the lower categories of tenure, the list shall show (1) the name of the employee, (2) the class title of the position occupied if different from the class title shown in the heading (supplemented in parentheses,

where necessary, by the customary office title), and (3) the action to be taken. However, if any employee in a lower category of tenure is to be retained or is to be demoted to a position of a lower grade (or occupational level) rather than separated, the list must give full information for all employees from the lowest category of tenure in which this occurs to the highest category of tenure affected, inclusive. The reduction in force list shall contain:

(a) *The heading.* The heading will identify the department, bureau, division, organization unit, and class in which the reduction in force is being made.

(b) *The list.* The list, identified by the appropriate category of tenure, will contain the following information:

1. Name of employee. Names should be listed in the order of selection, with the first name to be selected at the bottom of the list.

2. Class title of position occupied by employee if different from class title shown in the heading (supplemented in parenthesis, where necessary, by the customary office title).

3. Salary rate.

4. Statement whether employee is entitled to military preference. No entry need be made for employees not entitled to military preference.

5. Efficiency rating (adjective rating only; the numerical rating, if any, is not considered).

6. Length of service (total years of Federal government service).

7. Reduction credits.

8. Action to be taken. Enter the letter "S" if employee is to be separated, "F" if employee is to be furloughed, the letter "D" if to be demoted to a position of lower grade (or occupational level). If no reduction in force action is to be taken but the salary of the employee is to be reduced, enter the letter "R". If the employee is to be retained in preference to other employees, enter an asterisk (*). Any convenient code may be used to indicate other changes if explained on the form

9. A "Remarks" column or space for brief explanations or reference to footnotes or separate memoranda regarding basis for breaking ties when necessary, retention in prefer-

ence to other employees, special efficiency rating, or any other matter which may be pertinent.

(c) *The certificate.* The reduction in force list shall bear substantially the following certificate by the head of the department or some person authorized to act for him.

I certify that the foregoing list contains the names of all employees holding positions in the organization unit and class in which a reduction in force is contemplated who are in the categories of tenure affected by such reduction in force; that, to the best of my knowledge and belief, the efficiency ratings are fair and just, and that the foregoing list is correct and in accordance with the procedure prescribed for reduction in force.

The action proposed above are to be effective upon the expiration of accrued leave after the last day of active duty which will be....., 19...., unless otherwise indicated in the "Remarks" column. The employees affected were notified of the proposed actions on....., 19...

.....

Date

(Signed).....

Title

§ 12.309 *Separations; demotions; furloughs.* Heads of departments and independent establishments shall determine whether employees affected by reductions in force shall be separated, demoted, or furloughed, in accordance with the following rules:

(a) Where the reduction in force is permanent, as nearly as can reasonably be determined administratively, the affected employees shall be separated unless they have restoration rights to lower-grade positions or unless there is an administrative policy to demote employees in higher-grade positions to lower-grade positions and make separations in lower-grade positions, in either of which cases they may be demoted. No employee entitled to military preference shall be separated insted of being demoted if any other employee of lower standing on the reduction in force list is demoted unless such employee has restoration rights to the lower-grade position or unless it can be demonstrated as a matter of fact that the employee entitled to military preference could not perform the duties of the lower-grade position within a reasonable training period.

(b) Employees may be furloughed if the reduction in force is the result of a temporary condition that will exist for less than one year. The furlough period shall be one year or the period of tenure determined by the type and restrictions of appointment, whichever is less. While on furlough, employees shall have preferential rights to recall to duty over persons who may be considered for original appointment to positions of the class and organization unit from which furloughed, in the inverse order of furlough ranking. Employees who are not recalled to duty within the furlough period shall be separated from the service.

These provisions shall not disturb any other reinstatement or reemployment list rights that employees may otherwise have. This procedure shall not be interpreted to conflict with any statutory provisions relating to restoration rights after return from military service.

§ 12.310 *Notice to employees.* Each employee affected by a reduction in force shall be given an individual notice in writing at least 30 days before the action becomes effective. Wherever possible, the notice should be given 30 days before the employee is relieved from active duty. Whenever appropriated funds can be made available to pay for accrued leave, employees affected by reductions in force shall have at least 30 days' notice before they are separated from a pay status and shall be carried in a pay status for such additional period as is necessary to exhaust accrued leave. In no case shall an employee be separated as a result of a reduction in force without 30 days' notice in advance of such separation.

In addition to the nature of the action and the date of termination of active duty, the notice shall inform the employee:

(a) Of his right to be continued in a pay status until accrued leave is exhausted.

(b) Of his right to appeal the proposed action to the Commission (Washington employees to the central office and others to the appropriate regional office) within 5 days from the receipt of the notice.

(c) Of any restoration or reemployment list rights he may have, and of the procedure and departmental or field channels through which the employee may apply for other government employment.

§ 12.311 *Submission of reduction in force list to the Commission.* As soon as employees are notified of the proposed action, two signed copies of the reduction in force list shall be transmitted to the appropriate office of the Commission (central office in the case of employees in Washington and vicinity, and regional offices in the case of employees stationed outside of Washington and vicinity). Actions may be made effective on the date indicated on the reduction in force list without the prior approval of the Commission but subject to a post-audit in the Commission's discretion, and subject to appeal to the Commission by an employee who feels that there has been a violation of his rights under military preference laws or these regulations. Appeals from employees must be submitted to the Commission in writing within 5 days from the receipt of notice of the proposed action. Any department or establishment desiring to do so may request the Commission to preaudit and approve the reduction in force list before proposed actions have been made effective. In so far as possible, the Commission will assist departments and establishments in planning the preparation of reduction in force lists upon request.

Whenever a department or establishment determines to separate, demote, or furlough employees whose names, with complete information, have already appeared on a reduction in force list that has been certified to the Commission during the same efficiency rating period in connection with action on other cases, it shall be necessary only for the department or establishment to report such cases to the Commission, referring to the list on which the ratings appear, and certifying as to the notices to employees.

§ 12.312 *Effect of decisions on post-audits and appeals.* Whenever the Commission, in acting upon the appeal of an employee or as a result of a postaudit, disapproves the separation of an employee under these regulations, if the employee is still carried on the rolls of the department or agency in an active duty, leave, or nonpay status, the head of such department or agency shall cancel the notice of separation. In such a case, where the employee has been relieved from active duty, he shall be restored to active duty. If the employee has been separated from the service before the department or agency is advised of the disapproval of the action by the Commission, the head of such department or agency shall promptly restore the employee to the position from which separated whenever such action can be accomplished under the law and regulations and in

the public interest. In the case of the disapproval of a demotion, the employee shall be restored to the position from which he was demoted. In the case of the disapproval of a furlough in excess of 90 days, the employee shall be restored to active duty immediately, if the furlough has been in effect for 90 days, or within 91 days of the time he entered a nonpay status if the furlough has not been in effect for 90 days. In additional separations, demotions, or furloughs in excess of 90 days are necessary as a result of cases disapproved by the Commission, they shall be made in accordance with reduction in force procedures. With respect to reductions of force outside of Washington, D. C., and vicinity, the decision of the Commission on appeals and postaudits.

§ 12.313 *Prior reduction in force regulations superseded.* Effective immediately, the regulations in this part supersede all rules, regulations, or interpretations, or any parts of them, which are inconsistent with the procedure contained herein.

